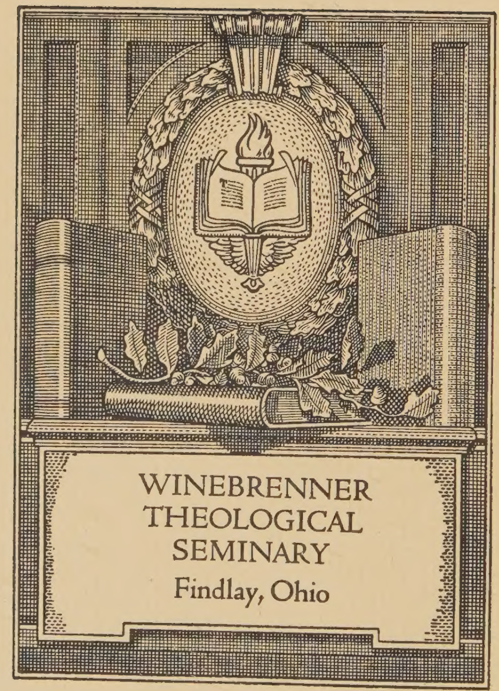

WINEBRENNER
THEOLOGICAL
SEMINARY
Findlay, Ohio

LIBRARY
WINEBRENNER THEOLOGICAL
SEMINARY

HEBREW UNION COLLEGE ANNUAL

LIBRARY
WINEBRENNER THEOLOGICAL SEMINARY

BOARD OF EDITORS

DAVID PHILIPSON, CHAIRMAN
JACOB Z. LAUTERBACH JULIAN MORGENSTERN
SHELDON H. BLANK, SECRETARY

VOLUME VII

CINCINNATI
1930

Copyright by
UNION OF AMERICAN HEBREW CONGREGATIONS
1931

PRINTED AT
THE HEBREW PRESS OF THE
JEWISH PUBLICATION SOCIETY OF AMERICA
PHILADELPHIA, PA.

TABLE OF CONTENTS

The Character and Date of Ezekiel's Prophecies
Moses Buttenwieser, Hebrew Union College, Cincinnati, Ohio.......1

The Book of the Covenant, Part II
Julian Morgenstern, Hebrew Union College, Cincinnati, Ohio..... 19

The Septuagint Renderings of Old Testament Terms for Law
Sheldon H. Blank, Hebrew Union College, Cincinnati, Ohio.......259

The Present State of Textual Criticism of the Old Testament
Joseph Reider, Dropsie College, Philadelphia....................285

Al-Qirqisānī's Account of the Jewish Sects and Christianity
Leon Nemoy, Yale University Library, New Haven, Conn........317

Rashi's View of the Weak, ע"ע, and פ"ן Roots
Henry Englander, Hebrew Union College, Cincinnati, Ohio.......399

L'exégèse Biblique des Juifs d'Allemagne Au Moyen Age
M. Ginsburger, Strasbourg, France...........................439

The Sermons of Azariah Figo
Israel Bettan, Hebrew Union College, Cincinnati, Ohio...........457

The Letters of Rabbi Mahalalel Halelujah of Ancona
Simon Bernstein, New York...................................497

The Love Letters of Bendet Schottlaender
Jacob R. Marcus, Hebrew Union College, Cincinnati, Ohio.......537

83- 2032

THE DATE AND CHARACTER OF EZEKIEL'S PROPHECIES[1]

By MOSES BUTTENWIESER, Hebrew Union College, Cincinnati, Ohio

EZEKIEL, according to his own statements, took up his prophetic activity among the exiles at Tel-Abib in the fifth year of their captivity, that is, in 592 B. C., and continued it down to the fourteenth (or possibly the sixteenth) year after the fall of Jerusalem. He claims that he was expressly commissioned by God to speak to the exiles, "whether they would hear or would forbear,"[2] and that even in the first period of his activity he applied himself to that end, spending the interim between his call as a prophet in 592 B. C. and the fall of Jerusalem in 586 B. C. in the endeavor to make the exiles see that Jerusalem was to be destroyed and the rest of the nation exiled. He makes out not only that the first half of his book (if not two-thirds of it) was the immediate product of his efforts to open the eyes of the exiles to what the final destiny of the nation was to be, but also that several of the prophecies of chaps. 1–24, specifically chaps. 8–11 and chaps. 14 and 20, were delivered either before the entire body of the exiles or before their elders, likewise that the symbolic actions related in chaps. 12 and 24 were performed and explained by him in public.[3] This claim on the part of Ezekiel is generally accepted by biblical scholars as bona fide, and there would be no reason to question it were it not for the fact that it is at variance with certain other equally definite statements in his book.

---

[1] I shall remark from the outset that since the view of G. Hölscher, *Hezekiel, Der Dichter und das Buch* (*BZAW* 1924), that the Book of Ezekiel is the work of two writers, or even of more than two, has been refuted by W. Kessler, "Die Innere Einheitlichkeit des Buches Ezekiel" (*Berichte des Theol. Seminars Herrenhut* XI, 1926), and also by R. Kittel, *Geschichte des Volkes Israel*, 1927, III, 1, pp. 144ff., I have not considered it necessary to discuss Hölscher's view in the present article.

[2] See Ezek. 2.4f., 7; 3.11.

[3] See ib. 11.25, "I told the captives all God had shown me," with which Ezekiel concludes the visionary voyage he relates in chaps. 8–11; 14.1, 4, 6, "Some of the elders of Israel came and sat before me . . . Therefore speak to them and say . . . Speak to the house of Israel and say; 20.1–3.7, 30, "In the seventh year (i. e., of Jehoiachin's captivity), on the tenth day of the fifth

I

In chap. 3.1–15 Ezekiel tells us that following his first vision and God's command to him to reveal forthwith to the exiles the content of the book he had swallowed, he went to Tel-Abib; but that, instead of delivering himself of the revelation he had received, he sat for seven days among the exiles rigid and dumb. He goes on to relate (in vv. 16a, 22–27) that no sooner had he recovered his senses at the expiration of the seven days than he had another vision, in which God ordered him to shut himself up in his house and to remain there bound and speechless and not to go forth among the people as their prophet or admonisher until God should again open his mouth.[4] Then in chap. 33.21–22 and

---

month some of the elders of Israel came to consult God and sat before me. Then the word of God came to me: Son of man speak to the elders of Israel, and say to them . . . I said to them . . . Therefore say to the house of Israel." Note also the statement he makes and repeats moreover four times, that it was "in full view of the people" that he carried out the symbolic action described in 12.2–16, also that in 24.19–21 he tells that the people asked him, why he failed to perform the customary mourning rites for his dead wife: "The people said to me: Wilt thou not tell us, what it should mean to us that thou actest like this? I said to them: The word of God came to me, Say to the house of Israel."

[4] 3.22–27 formed originally, as R. Kraetzschmar, *Das Buch Ezechiel*, 1900, p. 35f., and J. Hermann, *Ezechiel*, 1924, p. 25f., have recognized, the immediate continuation of vv. 1–16a. Verses 16b–21, which break the sequence, are not a part of Ezekiel's vision of his call related in chaps. 1–3. I cannot agree however with Kraetzschmar that vv. 16b–21 were added by a later redactor, having been suggested to him by 33.1–20; and still less can I agree with Hermann that Ezekiel himself might have added them later when he undertook the final revision of his prophecies. Both scholars in their conclusions have laid too much stress on the almost verbatim identity of 3.17–19 with 33.7–9, which is after all but of secondary importance. Consequently, they have lost sight of the weightier fact that 3.20–21 is complementary to 33.7–9 (and by the nature of the case also to 3.17–19): 33.7–9 defines the prophet's responsibility toward the habitual sinner who persists in his wicked course, while 3.20–21 defines the responsibility he has toward a righteous man who

also in chap. 24.25–27 he tells how long he kept up the silence that had been imposed upon him, stating that it was not until the news of the fall of Jerusalem was brought to him in Babylon by a fugitive that God opened his mouth so that he was no longer dumb.

How is this contradiction to be explained? It is plain, it seems to me, that these statements of Ezekiel cannot be taken figuratively to mean (as Smend,[5] Toy[6] and others believe) that the indifference of the people thwarted the prophet's activity. Rather it is obvious that they speak of a real, definite fact, that contrary to his erstwhile commission from God to speak to the exiles whatever had been or would be revealed to him, he did not take up his activity as a prophet, but remained silent until the fall of Jerusalem. It is equally plain that the view advanced by Klostermann,[7] and accepted by Bertholet,[8] Kraetzschmar[9] and Hans Schmidt,[10] that Ezekiel was subject to cataleptic fits does not solve the problem—as a matter of fact, it evades the question at issue. Whether Ezekiel was a cataleptic or not, is after all quite immaterial for our purpose here, though an interesting question in itself, and as such worthy of a word of elucidation in passing. That he was subject to ecstasy is beyond doubt, as we shall see later. Whether or not he was in addition a victim of catalepsy—in order to reach any definite conclusion on this point, the many similar cases, related in Hellenic, Hellenistic, Persian, Hindoo, and medieval literature, of the morbid

---

lapses into sin. This fact, it seems to me, points to the conclusion that 3.20–21 originally formed the direct continuation of 33.7–9, and that at one time in the course of transmission these verses were omitted, and, with the three opening verses of the passus prefixed as a cue, were put in a blank space of the manuscript, whence both, the omission and the cue, were in the next copy mechanically inserted in ch. 3 after v. 16a. Presumably it was in the margin at the bottom of the page, the last words of which were those of 3.16a, that the omission with the cue was put.

[5] *Der Prophet Ezechiel*, 1880, pp. 25ff., 177.

[6] *The Prophet Ezekiel* (in *SBOT*), 1899, p. 98.

[7] "Ezechiel" in *Theologische Studien und Kritiken*, L, 1877, pp. 391ff.

[8] *Das Buch Hezekiel*, 1897, pp. 18f., 130, 173.

[9] *Das Buch Ezechiel*, 1900, pp. 38f., 239.

[10] "Die Grossen Propheten" (in *Die Schriften des Alten Testaments in Auswahl*), p. 385f.

actions of mystics while in the state of ecstasy, would have to be carefully examined and compared. Meanwhile the article on ecstasy in *The Encyclopaedia Britannica*[11] may be found rather illuminating:

> "The state of ecstasy resembles in many points that of catalepsy, but differs from it sufficiently to constitute it a separate affection. The patient in ecstasy may lie in a fixed position like a cataleptic, apparently quite unconscious, yet, on awaking, there is a distinct recollection of visions perceived during this period."

The fact remains that Ezekiel's claim that in the years 592–586 B. C. he carried on a definite prophetic activity among the exiles at Tel-Abib cannot be reconciled with his statement that he remained absolutely silent through these years. Only one of the assertions can be true, the other must be fictitious. It is not hard to decide which is the correct one, inasmuch as a careful examination of the Book of Ezekiel reveals the fact that both chaps. 33–48 and chaps. 1–32 are a product of the time, not before, but after the destruction of Jerusalem.

Throughout chap. 25 and again at the opening of chap. 26, Ezekiel speaks of the destruction of the Temple and country and of Judah's exile as actual happenings. Five times he refers to these events, voicing his resentment in turn against Amon, Moab, Edom, the Philistines, and Tyre, because of their "malicious exultation" over the fate of Judah (25.3ff., 8ff., 12ff., 15ff.; 26.2ff.). It will suffice to quote the first and third of these references:

> "Thus says God: Because the sons of Amon said, Aha! over my sanctuary when it was profaned, and over the land of Israel when it was laid waste, and over the House of Judah when they went into exile, therefore will I deliver thee to the sons of the East for possession"; and "Thus says God: Because Edom acted revengefully toward the house of Judah and committed great offence by taking revenge, therefore thus says God, I will stretch out my hand against Edom and cut off man and beast: I will make it desolate from Teman to Dedan; by the sword they shall fall."

---

[11] Eleventh ed., VII, p. 910.

This latter quotation is especially conclusive as his reference is to an actual happening connected with the conquest of Jerusalem —to Edom's having assisted Nebuchadnezzar in overthrowing the country, by way of revenge for the wrongs she had so long suffered as Judah's vassal.[12]

Also in 16.56–57 Ezekiel alludes to the actual destruction of the country and the gloating of Judah's neighbors: "Thy sister Sodom was not mentioned by thee in the day of thy pride, before thy nakedness[13] was laid bare as it now is when thou art an object of derision to the daughters of Edom[14] and the daughters of the Philistines round about that treat thee with contumely." "Thy nakedness was laid bare" is a figure of speech for suffering extreme violence and humiliation, specifically for the fall of the nation. This is shown by the parallel, vv. 37 and 39, where the figure is more fully developed, and still more convincingly by Jer. 13.22, where the figure is found in its original and more complete form: נגלו שוליך נחמסו עקביך, "Thy skirt will be stripped off, thy heels will suffer violence," and again v. 26, חשפתי שוליך על פניך ונראה קלונך, "I will lift thy skirt over thy face that thy nakedness may appear." In these verses the figure suggested itself naturally, since the nation is personified as mother.

A still more striking example is *The Lament over the Vanquished Nation* (chap. 19.10–14). Biblical scholars are agreed that these verses are a product of the time after the destruction of the nation. Not only does their content show this, but also the fact that throughout the verses the perfect tense is used without any interchange with the imperfect. Verses 12–13 will suffice to illustrate this:

> "But in fury the vine was plucked up, cast down to the ground,
> The East wind dried up its fruit.
> Broken off was its mighty branch, and withered, consumed by the fire.
> Now it is planted in the wilderness, in a dry and thirsty land."

[12] Cf. 2 Sam. 8.13–14; 2 Ki. 8.20–22; 14.7, 22.

[13] Instead of רעתך read, in accordance with the parallel v. 37, ערותך.

[14] Instead of ארם read, with many MSS. and Syriac, אדם.

As to the exclusive use of the past tense, it may be noted that it extends even to the subscript, קינה היא וַתְּהִי לקינה the וַתְּהִי of which has unwarrantedly been emended by a number of scholars to וּתְהִי.[15]

To the question how these various references to the destruction of Judah as a real event can be reconciled with Ezekiel's claim that chaps. 1–32 are, with the exception of the last chapter, the product of the years 592–586 B. C., the answer is generally given that they are not an original element of the prophecies in question, but were added by Ezekiel later when, some fourteen years after the fall of Jerusalem in 586 B. C., he revised his former prophecies for the purpose of editing them. Such an explanation, however, does not hold, as may best be seen from an examination of chap. 12.1–16 and of chaps. 8–11.

Chap. 12.1–16 tells circumstantially of a symbolic action performed by Ezekiel before the exiles at Tel-Abib and of the explanation given by him of his action at the time. They state that after getting ready his pack as though for exile, he dug a hole through the wall of his house and, passing out through it in the dark before the eyes of the people, walked away, with his pack on his back and his eyes blindfolded, so that he might not see the land. In answer to their inquiry, he told the people the following morning that his action was symbolic of the captivity awaiting the House of Israel, particularly the Prince in Jerusalem, who should wander forth in the dark, digging a hole through the wall for an exit; he should go forth blindfolded and be taken to Babylon, which he should not see, and there he should die.

This prophecy tallies in every respect with what actually happened at the time of the fall of Jerusalem. The night Jerusalem was conquered, Zedekiah attempted to make his escape from the city. But he was pursued and captured by the enemy, taken to Nebuchadnezzar's headquarters at Riblah, where he was blinded, and then led in chains to Babylon.[16] The further fact that chap.

---

[15] As I have pointed out in "Where Did Deutero-Isaiah Live?" (in *JBL*, XXXVIII, 1919), p. 103f., it is by the writer's consistent use of the perfect that *vaticinia post eventum* are betrayed as such, while genuine prophecies are recognized by the fact that the prophetic perfect is invariably used alternately with the imperfect.

[16] See 2 K. 25.4–7; Jer. 52.7–11.

12.1–16, as generally acknowledged, forms an organic whole leaves room for but one conclusion—that the entire passage must be a *vaticinium post eventum*. And this brings us to the heart of the matter. When Ezekiel in chap. 3 and in chap. 33 and also in chap. 24 states that in the interim between his call and the fall of Jerusalem in 586 B. C. his mouth was shut and he carried on no prophetic activity whatever, he is simply telling the truth, quite oblivious of the fact, we may believe, that he is giving himself away. The entire first part of his book, that is, chaps. 1–31, are not real prophecies but are only disguised as such—they are, without exception, *vaticinia post eventum*. Though the Book of Ezekiel cannot be said to show any of the eschatological notions of later apocalyptic literature, and for this reason cannot be classed as such, the method or artifices employed in it, conspicuous among which is the strange mingling of fact and fiction, are typically the same as characterize the apocalyptic writings.

II

Another feature which the Book of Ezekiel has in common with apocalyptic writings is the prominence given to visionary voyages. These, it must be emphasized, are by no means a mere literary device, but are, as the numerous parallels throughout the religious literature of antiquity show, a typical case of prophetic ecstasy or mantic possession. The voyages to heaven and hell, which play so prominent a rôle in apocalyptic literature, and the flight of the soul to heaven, which figures no less prominently in the Hermetic writings of Hellenistic times and the early Christian centuries, are their direct offshoots. They are all alike rooted in the primitive notion of revelation that prevailed through those ages; that is, the notion that "Inspired or true divination," as Plato puts it, "is not attained by anyone when in his sound senses, but only when his rational faculty is fettered in sleep or by disease, or if he has become distraught by some divine possession."[17] The trance-like seizure, if not the immediate result of morbid, neural disturbances, may be artificially induced by various means, such as the use of narcotic drinks, flagellation, orgiastic dancing, self-hypnotism by the mechanical repetition of words or the fixed gazing upon a crystal, and especially by fasting, often for weeks and months, and ascetic discipline in general, all of which are calculated to liberate the mind for the time being from the trammels of ordinary sensation. Since Ezekiel's visionary voyages to Jerusalem, described in chaps. 8–11 and in chaps. 40–48, and also the one spoken of in 3.14f., are of especial importance in determining his notion of revelation and the category of prophets to which he belongs, various parallels may be adduced in further elucidation.

---

[17] Οὐδεὶς γὰρ ἔννους ἐφάπτεται μαντικῆς ἐνθέου καὶ ἀληθοῦς, ἀλλ' ἢ καθ' ὕπνον τὴν τῆς φρονήσεως πεδηθεὶς δύναμιν ἢ διὰ νόσον ἢ διὰ τινα ἐνθουσιασμὸν παραλλάξας, *Timaeus*, XXXII. 71e.

Of Aristeas of Proconnesus (of the 6th century B. C.) it is told that he possessed the magical power of remaining in ecstasy for long periods. When his soul "seized by," or to express it more adequately, "possessed by Phoebus," *φοιβόλαμπτος γενόμενος*, would leave his body, he would visibly appear as another ego at distant places, all the while his body would be rigid as if dead. Transformed into a raven,[18] he appeared one day in the escort of Apollo at Metapont in Italy. Revealing his presence to the astounded citizens, he bade them set up an altar to Apollo and a monument to himself beside it: thereupon he vanished.[19]

As another such ecstatic seer of ancient Greece I shall mention Hermotimus of Klazomenae, of whom it is told that his soul would often leave his body for a long time and wander through distant places. When his soul would return to him from its ecstatic flights, he would be able to reveal things of which it was impossible to attain knowledge in a natural way. On one such occasion his rigid body, betrayed by his wife, fell in the hands of his enemies and was burned to death.[20] Brief mention may be made also of Epimenides of Crete, who induced long ecstasies of his soul by fasting and by a solitary ascetic life.[21]

---

[18] The raven was sacred to Apollo, the god of prophecy.

[19] Herodotus IV.13–15; Maximus Tyrus 16.2; Plinius, *Nat. Hist.* VII. 174; Suidas, s. v. Ἀριστέας; Erwin Rohde, *Psyche*, 4. Aufl., II, pp. 91ff.; E. Bethe, "Aristeas" in Pauly-Wissowa, *Real-Encyclopädie der klassischen Altertumswissenschaft*, III, 876ff.

[20] See Appollonius, *Hist. Mirab.* 3; Plinius, *Nat. Hist.* VII. 52; Plutarch, *De Genio Socrat.* 22; Rohde, *op. cit.* II, 94f.; E. Wellmann, "Hermotimos" in Pauly-Wissowa, *op. cit.* XV, 904f.

Of Er of Armenia Plato tells, in the *Republic* X. 614b ff., that he fell in battle, and that after he had been lying as if dead for twelve days, he awoke as he was put on the funeral pile, and told at length how his soul had been taken through the heavenly and the infernal regions and been shown the joys and brilliance of the former and the horror and darkness of the latter.[22] Another experience of the kind Plutarch relates, in *De Sera Numinis Vindicta* XXII. 563d ff., of Aridaius, who for three days lay rigid as if dead and, on awaking, told that, conducted by the soul of a recently departed relative, his own soul had wandered through Elysium and Infernum and had seen the glorious life enjoyed by the souls of the blessed in the one and the misery suffered by the spirits of the wicked in the other.[23]

A Persian parallel to the last two ecstatic visions is the Vision of Arḍâ Vîrâf.[24] Being the most pious of Mazda believers, Arḍâ Vîrâf was chosen to go to heaven to bring back a revelation of Ormazd about the true religion. To induce ecstasy he is given a cup of narcotic to drink; whereupon he sinks into a deathlike sleep and lies in a fixed position for seven days, while his soul, conducted by Srosh and Atar, wanders through the heavenly regions. Crossing the Chinvaḍ bridge, it traverses the place beneath the stars, where are the souls of those whose good and evil works balance each other, then crossing the three heavens,[25] arrives at Garothmāna, the abode of Ormazd. Here it is shown the blessed place of the righteous souls and the damned place of the wicked spirits, whose joys and torments are described at length.

---

[21] See Rohde, *op. cit.* II, p. 96f.

[22] See A. Dieterich, *Nekyia*, 1893, p. 114f.

[23] See Dieterich, *op. cit.* p. 145f.

[24] In its original form the Vision has been preserved in the Pahlavi translation: *The Book of Arḍâ Vîrâf*, edited and translated by Haug and West, 1872.

[25] Unlike the later more familiar notion of heaven, the older Persian notion, retained in the Pahlavi translation of Arḍâ Vîrâf, divides the heavens, not into seven, but into four spheres: the first holds the stars, the second the moon, the third the sun, and the fourth is the abode of Ormazd (Ahura Mazda).

I have chosen the three last examples, not only as additional illustrations of prophetic ecstasy, but also for the reason that they belong properly with the voyages to heaven and hell of apocalyptic literature and thus show at a glance that these voyages are but an offshoot of ecstatic visions. This prima facie evidence is fully confirmed by the various apocalyptic writings, inasmuch as these furnish ample evidence that the idea of revelation entertained by their authors is not the advanced view of Amos and his great successors, who held that God reveals Himself to the inner perception of man,[26] but the primitive notion of those ages as defined by Plato. Like the latter they conceived of revelation as a veritable state of possession that could be mechanically induced at will. To substantiate this statement it will suffice to refer to The Book of Enoch I—XXXVI, and to The Book of Daniel, and briefly also to 4 Ezra.

In the Book of Enoch, Enoch's voyage to heaven and hell described in chaps. 14.9–chap. 36 is introduced as follows: "Sitting down by the waters of Dan in the land of Dan southwest of Hermon, I laid their petition[27] before God till I fell asleep. And behold a dream came to me and visions fell upon me, and I saw visions of chastisement, and a voice came bidding me to tell all this to the sons of heaven[27] and to reprimand them. And when I awoke, I came unto them, and they were all sitting together, with their faces covered, weeping, in Abelsjail, which is between Lebanon and Seneser. And I recounted to them all the visions which I had seen in my sleep . . . I saw in my sleep what I will now tell with a tongue of flesh and with the breath of my mouth . . . And the vision was shown to me thus: Behold in the vision clouds invited me and a mist summoned me, and the course of the stars and the lightnings sped and drove me, and the winds in the vision lent me wings and lifted me upward and bore me unto heaven" (13.7ff., 14.2,8).

In The Book of Daniel, the visions of Daniel are described, some as dreams he had as he lay asleep at night, others as ecstatic visions he experienced while in a state of trance induced by prolonged fasting and other ascetic discipline. Note that in one of these visions he is carried off from Babylon to Susa, the capital of Elam, and that about another he remarks that the apparition was not discerned by the men in his company. Note also that he describes the trance as attended by a melancholic, anergic stupor, the effects of which lasted for days after he had come out of it.[28]

---

[26] See *The Prophets of Israel*, pp. 135–163, where I have discussed this prophetic view of inspiration at length.

[27] The petition spoken of is that of the sons of heaven who came down to earth and took the daughters of men for their wives.

Also the visions of the Apocalypse 4 Ezra are ecstatic visions experienced in the state of trance. It is however not necessary to go into them fully, but merely to point out that the writer is very specific and detailed, more so even than the writer of Daniel, on the immediate effect as well as on the aftereffects of the ecstasy. Thus in 3.1ff., 6.35, and 10.25 he speaks of his agitation over the vision, how it filled his heart with fear and dismay, and in 10.29 he says that he "lay as if dead, with his senses gone," while in 5.14 he tells that as he came out of the trance "his body shook and his mind was faint with exhaustion," and similarly in 12.5, "Now my soul is languid, and my spirit listless, and no strength is left in me, because of the great fear which fell upon me in the night."

III

The similarity which the foregoing examples of prophetic ecstasy bear to the case presented by Ezekiel is most conspicuous. The similarity extends even to such typical expressions—typical, that is, of the very phenomenon described—as "seized" or "possessed by the god," *φοιβόλαμπτος*, and its synonyms, it should be added. The equivalent expression in Ezekiel is רוח . . . ותקחני, 3.14, which does not mean, "The spirit took me away" or "carried me off," but "The spirit seized me," that is, "possessed me," or to express it according to the more common usage, "I was possessed of the Spirit." The fact that ותקחני is active cannot be advanced as an argument against this meaning, since in Greek, too, the active voice of *λαμβάνειν* is used with identically the same meaning as the passive *θεόληπτος*: cf. Herodotus IV.79 . . . *ἡμέας ὁ θεὸς λαμβάνει. νῦν οὗτος ὁ δαίμων καὶ τὸν ὑμέτερον*

---

[28] See Dan. 7.1f., 13; 8.1f., 18, 27; 9.3, 21; 10.3, 7ff.

βασιλέα λελάβηκε . . . τε καὶ ὑπὸ τοῦ θεοῦ μαίνεται, ". . . the god possesses us. Now this god has possessed also your king . . . and the king is inspired by the god." It is clear then that Ezekiel's expression ותקחני רוח, used in 3.14 is synonymous with the expression ותבא בי רוח, "The Spirit entered into me," which he uses in 2.2 and 3.24. No argument to the contrary can be deduced from the fact that neither ותקחני רוח nor ותבא בי רוח denotes mantic possession anywhere else in the Old Testament writings, for the reason that the older literature, that is, the literature antedating the rise of literary prophecy, to express the notion, uses for בא ב' the synonymous term צלח על or צ' אל: cf. 1 Sa. 10.6 וצלחה עליך רוח יהוה והתנבית, "The Spirit of YHWH will enter into thee and thou wilt go into ecstasy" (this is the primary meaning of התנבא); and again v. 10 ותצלח עליו רוח אלהים ויתנבא, "The Spirit of God entered into him and he went into ecstasy"; cf. also ib. 18.10 ותצלח רוח אלהים רעה אל שאול ויתנבא בתוך הבית, "The evil spirit of a demon entered into Saul and he raved[29] through the house." As to צלח denoting "enter," note that the primary meaning of the word is "to penetrate" and also that in 2 Sa. 19.18 צלחו הירדן means "They crossed the Jordan." The decisive thing is however not this older synonym of ותבא בי רוח, but rather the fact that the use of the latter to signify possession is, like the similar use of ותקחני רוח, in no wise peculiar to Ezekiel, since the equivalent Greek *θεός* or *πνεῦμα ἔρχεται εἰς* or *ἐπί personam*, used with identically the same meaning, is very common in classical and Hellenistic Greek alike. It occurs twice in New Testament Greek, in Matth. 3.16 *καὶ ἰδοὺ ἠνεῴχθησαν οἱ οὐρανοί, καὶ εἶδεν πνεῦμα θεοῦ καταβαῖνον ὡσεὶ περιστεράν, ἐρχόμενον ἐπ' αὐτόν*, and again in Acts 19.6 *καὶ ἐπιθέντος αὐτοῖς τοῦ Παύλου χεῖρας ἦλθε τὸ πνεῦμα τὸ ἅγιον ἐπ' αὐτούς, ἐλάλουν τε γλώσσαις καὶ ἐπροφήτευον.* As an example from classical Greek literature, Euripides, *Bac-*

---

[29] That התנבא may mean both "to go into ecstasy" and "to rave" is explained by the fact that the two phenomena have in common that for the time being a person's rational faculties are suspended or deranged, as the case may be. Note that throughout ancient times demented persons were like the diviners regarded as the confidants of the deity, as preeminently qualified to be the recipients of divine revelation.

chantes, 300f. may be quoted: *ὅταν γὰρ ὁ θεὸς εἰς τὸ σῶμ' ἔλθῃ πολύς, λέγειν τὸ μέλλον τοὺς μεμηνότας ποιεῖ*, "When the god enters our body with might, he makes his inspired followers to foretell the future." Still more illuminating is the following example from a magical papyrus (of the fourth century A. D.) belonging to the Hermetic writings: *ἐλθέ μοι Κύριε Ἑρμῆ, ὡς τὰ βρέφη εἰς τὰς κοιλίας τῶν γυναικῶν*,[30] "Enter into me, O Lord Hermes, as the fetus is conceived in the womb[31] of women." The comparison, "as the fetus is conceived in the womb of women," is particularly interesting, inasmuch as it shows that mantic possession was thought of as a physical rather than a spiritual phenomenon.

In my discussion of ותקחני ...רוח and ותבא בי רוח I have proceeded from the premise that by *Rūăḥ* the spirit of YHWH is meant: direct proof that this is indeed the case is furnished by the fact that in ותפל עלי רוח יהוה, "The spirit of YHWH invaded me" (Ezek. 11.5), *Rūăḥ YHWH* is mentioned expressly. The proof is the more conclusive as this expression, which is synonymous with ותקחני רוח and ותבא בי רוח, belongs like them to the stock of phrases common to ever so many languages. A pertinent Latin example, which fully describes the phenomenon referred to by Ezekiel in 11.5, is found in Lucan, *Pharsalia* 5.166ff.: *Artus Phoebados irrupit Paean, mentemque priorem expulit, atque hominem toto sibi cedere iussit pectore*, "Apollo invaded the body of his priestess, and driving out her former thoughts, he bade her human nature depart and yield her whole mind to him." To differentiate, as a number of scholars do, between "The spirit of YHWH invaded me" of Ezek. 11.5 and "The Spirit entered into me" of 2.2 and 3.24, and argue that it is only in the former that Ezekiel has reference to possession, that in the latter he speaks of something altogether different, namely, of "the wonderful vitality produced in him by God,"[32] is, to say the least, extremely subjective, since "The Spirit entered into me" is in the one instance continued with "As He spoke to me," and in the other with "And He spoke with me and said to me," just as "The spirit of YHWH invaded me" is continued with "And He said to me," and since furthermore *Rūăḥ*, without the article, occurs as the equivalent of *Rūăḥ YHWH* elsewhere in Old Testament literature. Thus e. g., for Gen. 41.38, איש אשר רוח אלהים בו, we have in Nu. 27.13 איש אשר רוח בו—both expressions meaning "A man in whom the spirit of God is;" and for Jud. 6.34, רוח יהוה לבשה את גדעון, and 2 Chron. 24.20, ורוח אלהים לבשה את זכריה בן יהוידע הכהן, we find in 1 Chron. 12.18 ורוח לבשה את עמשי—again both expressions meaning, "the spirit of God possessed" or "entered into" him: cf. Syriac *nĕbīya dĕlĕbīšā lēh rūḥa*, "A prophet possessed of the spirit," Eph. II. 243, and Greek *ἐνδύεσθαι*, used with the same meaning.[33]

---

[30] Edited by Kenyon, *Greek Papyri in the British Museum*, 1893, p. 116, Pap. CXXII, line 2ff.

[31] Here, as in both Old Testament and New Testament Greek, *κοιλία* is used with the meaning "womb."

[32] See Kraetzschmar, *op. cit.* p. 23 and 117; Toy, *op. cit.* p. 97 and 116, F. Giesebrecht, *Die Berufsbegabung der alttestamentlichen Propheten*, 1897, pp. 144, 146, and 148.

All these expressions, typical of the primitive notion of inspiration met with in Ezekiel, are unknown in the writings of the great literary prophets—naturally so, since the advanced view of inspiration which Amos, Hosea, Isaiah, Micah, Zephaniah, Jeremiah, and Deutero-Isaiah held, barred the use of them.

The examples of prophetic ecstasy that have been adduced also throw light on the much debated passage with which Ezekiel in 3.14f. continues the statement, "I was possessed of the Spirit," namely, ואלך מר בחמת רוחי ויד יהוה עלי חזקה. ואבוא אל הגולה תל אביב הישבים אל נהר כבר ואשב שם שבעת ימים משמים בתוכם. The verses are to be translated: "Overpowered by the hand of God, I went away in melancholy in my ecstasy, and I came to the exiles at Tel-Abib by the river Chebar, and sat for seven days rigid and dumb among them." Like the writers of Daniel and 4 Ezra, Ezekiel tells that his ecstasy affected him with melancholy and torpor, which continued for seven days after he had come out of it. The whole of chaps. 1–3, it may be briefly indicated, consists of two ecstatic visions, the first, chaps. 1–3.15, and the second, chap. 3.16a, 22–27. As soon as chaps. 1–3.15 are recognized as describing an ecstatic vision, the statement of 1.3, "As I was among the exiles" (which is usually glossed over with the remark that "among the exiles" must not be pressed) ceases to be at variance with the statement of 3.15, "And I came to the exiles at Tel-Abib by the river Chebar." Even as Ezekiel describes in chaps. 8–11 how he was sitting in his house, with the elders of Judah before him, when suddenly he was transported to Jerusalem by the spirit, and in due course brought back to the exiles, so he describes the vision of chaps. 1–3.15 as having come to him when he was with the exiles, with this difference however, that he omits to say that he was carried off by the spirit, though he does mention that he was conducted back by the spirit, that as he came out of the ecstasy, he was back among the exiles.

---

[33] Cf. Plutarch, *Def. Orac.* 9: *τὸ οἴεσθαι τὸν θεὸν αὐτόν... ἐνδυόμενον εἰς τὰ σώματα τῶν προφετῶν.*

Another excellent illustration of Ezekiel's primitive conception of inspiration is the story he tells in 2.8–3.3 to the effect that he became inspired by swallowing the book which the spirit hand reached out to him in his vision. Similarly the New Testament writer of The Revelation tells in 10.8–11 that he received his revelation about the happenings at the end of time, known to God only, by devouring the heavenly book in which they were recorded. But while Revel. 10.8–11 is a close imitation of Ezek. 2.8–3.3, there is another parallel in 4 Ezra 14.38–41, which is entirely independent of Ezekiel, and which is therefore of extreme importance for our purpose. Ready to carry out God's behest to restore the lost Law of the Lord, Ezra hears a voice calling to him:

> "Ezra open thy mouth and drink what I give thee to drink. Then I opened my mouth, and lo! there was reached unto me a full cup, which was full as it were with water, but the color of it was like fire. And I took it and drank; and when I had drunk, my heart poured forth understanding, wisdom grew in my breast, and my spirit retained the memory of it: and my mouth opened, and was no more shut" (i. e., for the purpose of dictating the Law to the five men that were with him).

This parallel in 4 Ezra stands midway between Ezek. 2.8–3.3 and another parallel found in the Egyptian *Tale of Khamuas and Neneferkaptah*: Khamuas had at last found the magical book "written by Toth's own hand" and had tested the magical power which the knowledge of it gave a man: whereupon he goes on to relate:

> "As I was no skilled scribe like Neneferkaptah, my elder brother, who was a good scribe and a very learned man, he caused a piece of new papyrus to be brought to him. He wrote on it every word that was in the book. He caused it to be soaked in beer, he dissolved it in water. When he saw that it had dissolved entirely, he drank it, and he knew all that was in the writing."[34]

Here we have the oldest illustration of the primitive notion met with in Ezek. 2.8–3.3 that the mind may absorb knowledge by physically consuming the contents of a book.

IV

The examples of ecstatic visions referred to show, as we have found, that the visionary voyages of Ezekiel, which are described at great length in chaps. 8–11 and in chaps. 40–48, were experienced while he was in a state of ecstasy. The first is particularly interesting. The opening verses, which are most explicit, read:

> "As I was sitting in my house, and the Elders of Judah were sitting before me, the hand of YHWH fell upon me there. And I saw, and behold, a form like that of a man;[35] and the appearance of what seemed his loins downward and upward was like that of fire, like the gleam of shining metal. And He stretched forth the form of a hand and seized me by the flowing hair of my head; and the spirit lifted me up between earth and heaven and conducted me in the visions of God to Jerusalem, to the door of the gateway of the inner court that faces North . . . And behold, there was the Glory of the God of Israel, like the vision which I saw in the valley."

The account of this visionary voyage is important for our purpose also in another respect: it illustrates, even more strikingly than the symbolical action of chap. 12.1–16 does, the method Ezekiel employs in the first part of his book, that is, in chaps. 1–32. Among the things that he does and beholds in his ecstatic voyage, the prophecy related in chap. 11.1–13, which he delivers in Jerusalem, plays a prominent rôle. (Note the parallel to the similar performance of Aristeas of Proconnesus referred to above.) Ezekiel prophesies to the government party convened in the east gateway of the Temple that for their sinful doings they shall be executed by the hands of the enemy on the border of Israel. Here we have another clear reference to what actually happened at the time of the fall of Jerusalem, when the high officials of the state were taken from Jerusalem to Nebuchadnezzar's headquarters at Riblah, on the border of Israel, and there executed.[36]

---

[34] The story has been edited and translated by several Egyptologists, among others by F. L. Griffith, *Stories of the High Priests of Memphis*, 1900, pp. 82ff., and also 16ff.; the passage quoted is found p. 106ff. and p. 25.

[35] Instead of אֵשׁ read with the Greek אִשׁ—a reading borne out also by 1.26.

But this is not all. Ezekiel concludes that no sooner had he finished his prophecy than Pelatiah ben Benaiah, one of the officials addressed by him, dropped dead. Now in view of the fact that Ezekiel was not present bodily at the Temple in Jerusalem, and that consequently the prophecy he speaks of was not actually made, but was merely an imaginary prophecy, it is excluded that Pelatiah's sudden death could have been caused by it, or even been coincident with the prophecy spoken of here. Now Pelatiah, in all probability, did die suddenly in the sixth year of Jehoiachin's captivity, else Ezekiel would not have been likely to refer to it as a fact a decade or so later. The most probable explanation is that when some ten years after Pelatiah's death Ezekiel wrote his book, it occurred to him to bring this dramatic occurrence and the imaginary prophecy made on his visionary voyage to Jerusalem into the relation of cause and effect.

To sum up, the entire Book of Ezekiel was written some time after the fall of Jerusalem in 586 B. C. Chaps. 40–48, containing Ezekiel's ritualistic legislation for the future Israel, bears the date of the fourteenth year after the destruction of Jerusalem, and the brief supplement to the prophecies against Tyre and Sidon, chap. 29.17–21, dates from the sixteenth year of the same event, so that it seems safe to fix on 570 as the *terminus ad quem*. This conclusion regarding the date limit seems pretty safely grounded in view of the fact that Ezekiel's ritualistic legislation of chaps. 40–48 is the chief object of his book, all that precedes being, so to speak, but introductory or preliminary to it.

---

[36] See 2 Ki. 25.18–21; Jer. 52.24–27.

Perhaps the most startling experience for us in this study of the date and character of Ezekiel's writings is the realization that Ezekiel did not actually at any time before 586 B. C. predict the fall of Jerusalem, that only after that event had happened did he make out that he had prophesied it. And yet this fact is entirely in keeping with Ezekiel's spiritual viewpoint. For in spite of his advance theoretically Ezekiel never actually succeeded in rising out of the spiritual atmosphere in which he was born and reared, always he remained subject to the limitations of his own times. The real essence of the religious views of the great prophets he was not able to grasp. His limitations in this respect explain why the priesthood and Temple with its cult continued to have for him the mystic, sacramental significance attributed to them by primitive religion. They explain also why, although theoretically he had advanced to the belief in a universal God, yet in actual practice he continued to be swayed by the old popular notion of the exclusive relation existing between Yahweh and Israel.[37] It is therefore inconceivable, in spite of his allegations to the contrary in 10.18f. and 11.22f. of his visionary voyage, that Ezekiel in the year 591 B. C. should have had any idea that Jerusalem was doomed, or as he himself puts it, that Yahweh was about to leave Jerusalem and His Temple. Beyond a doubt, up to 586 B. C. he shared the common view of priest and laity that the Temple at Jerusalem was inviolate, that Yahweh could not possibly permit its destruction.

---

[37] The best illustration of this is his particularistic future hope.

THE BOOK OF THE COVENANT

Part II

By JULIAN MORGENSTERN, Hebrew Union College, Cincinnati, Ohio

I

HAVING completed, at least for the present, our consideration of the narrative section of the Book of the Covenant and its immediate historical implications, we return now to the more detailed and analytic consideration of the legal section. This constitutes by far the greater part of the Book, or rather of that portion thereof which has been preserved in the Bible, Ex. 20.23–23.19.[1]

---

[1] In fact many, and perhaps most Biblical scholars seem to hold that this constitutes the whole of the Book of the Covenant preserved in the Bible. With regard to Ex. 24.3–8 there has been a marked division of opinion. Most scholars seem inclined to regard these verses as belonging to E and to contain the Elohist account of the solemnization of the covenant at Horeb, based upon the so-called Elohist Decalogue in Ex. 20.2–17. However, the possibility of the relationship of these verses to C has been freely admitted. Apparently it has occurred to no one before this that Num. 10.33b may also belong to C.

In recent years the study of the legal section of C has received new impetus through the discovery and decipherment of the so-called "Old Oriental" laws and law-codes. The discovery of the Hammurapi Code and its first publication by Scheil in 1902 marked the beginning of this process. This was followed by the publication and deciphering of the Old Assyrian Code and the Hittite Code and of a small number of Sumerian laws. All these laws and law-codes show marked affinities with many of the laws of C as well as of other sections of the Bible. The character of this relationship has occasioned a re-study of the Book of the Covenant from this new angle, and has led to most interesting and surprising conclusions. Among these more recent studies the most noteworthy are cited here.

Waterman, "Pre-Israelite Laws in the Book of the Covenant," *AJSL*, XXXVIII (1921–1922), 36–54. Recognizing affinities between quite a number of the *mišpaṭim* of C and corresponding laws in the Hammurapi Code, the author concludes that the Hammurapi Code had been current among the early Canaanites, particularly those of Shechem, and that many of its laws had undergone modification and adaptation at their hands. These laws had been

Careful examination of this section shows that it contains four distinct kinds of law, each distinguishable from all the others

taken over by the Israelites shortly after their entrance into Palestine and constituted the basis of the covenant established, according to Biblical tradition, between the Canaanites and the Israelites at Shechem in pre-Mosaic times (cf. Gen. 33.18–34.31; Josh. 8.24; Jud. 8–9; also Josh. 24).

Jirku, *Altorientalischer Kommentar zum Alten Testament* (Leipzig-Erlangen, 1923), 90–99; also *Das weltliche Recht im Alten Testament* (Gütersloh, 1927). The author makes a detailed and in many respects valuable comparison of the various laws of C with corresponding laws in the Old Oriental codes, with a determination of their similarities and differences. He concludes that C must be of very ancient authorship and that the *mišpaṭim* are the oldest section of the code and must be ascribed to Moses, while the *debarim* are somewhat younger, though also of great antiquity. He offers, however, very little substantial evidence upon which to base these conclusions.

Ring, *Israels Rechtsleben im Lichte der neuentdeckten Assyrischen und Hethitischen Gesetzesurkunden* (Leipzig, 1926). In this extremely valuable work, marked by both thoroughness and soundness of method and sanity and moderation of conclusion, the author refuses to be stampeded either by the unquestioned importance of the various Old Oriental law codes or by zeal for any pre-conceived hypothesis. He compares minutely and soberly all the laws, not only of C, but also of all the Biblical codes, which have any apparent affinities with laws of these Old Oriental codes, and particularly of the Assyrian and Hittite codes, with the corresponding laws of these two last codes. He concludes that, while the indirect influence of these two codes, and also, of course, of the Hammurapi Code, upon Biblical legislation is beyond all question, there is little ground for holding that the authors of the various Biblical codes were themselves acquainted with and borrowed directly from these older Oriental codes. Rather these affinities can be explained sufficiently by the assumption that the indirect cultural influence of these Old Oriental codes was felt quite generally and persistently throughout the ancient Semitic world and therefore naturally affected later Semitic legislation. Likewise in dealing with parallel legal problems Israelite legislators naturally reached in general much the same conclusions and decisions as did their Babylonian, Assyrian and Hittite predecessors, with due allowance, of course, for such differences as varying economic, social, religious and ethical environments and outlooks would call forth.

Jepsen, *Untersuchungen zum Bundesbuch* (*Beiträge zur Wissenschaft vom Alten und Neuen Testament*) (Stuttgart, 1927). This work falls into two parts (a) a study of the text of C, and (b) a study of its affinities with the Old Oriental codes and an attempt to fix, upon the basis of these affinities, the literary origin and history of C. The first part of the work is done carefully and responsibly and is of high merit and value. In the second part the author follows Jirku to a considerable extent and even goes far beyond him. He is obviously both by form and content. Typical of the first class of laws is, for example, Ex. 23.12a, ששת ימים תעשה מעשיך וביום השביעי תשבת. It is

---

swayed by zeal for theories of what may well be called the present-day, pan-Oriental school, as opposed to the methods, principles and conclusions of the so-called Wellhausen school, and by an extreme and one-sided enthusiasm for a preconceived hypothesis, which he seeks to prove at all costs. Everything is grist for his mill. He divides the laws of C into two groups, those of Hebrew, i. e. of pre-Israelite, and those of Israelite origin. The majority of the *mišpaṭim*, those which have affinities of some kind or other with laws of the various Old Oriental codes, he regards as of Hebrew origin. He holds that they and the kindred laws in the other Old Oriental codes may all be traced back directly to a suppositious Emorite Code with a definite Palestinian background, of great antiquity and seemingly of long persistence. These *mišpaṭim* in C are therefore pre-Mosaic and were taken over by the Israelites more or less bodily from the Canaanites. The remaining *mišpaṭim* as well as what he calls "the religious and ethical prohibitions" and "the ritual provisions" are, on the other hand, of Israelite origin, with something of a desert background and of Mosaic or early post-Mosaic authorship. The *dᵉbarim*, or "ritual law," have the background of an agricultural civilization and must therefore be of Palestinian origin.

Accordingly, he concludes, the Book of the Covenant assumed practically its present form during the period of the Judges. The references to the altar as the place of refuge (Ex. 21. 13b, 14b), the additions to the altar law (20.25ff.) and the emphasis upon the cult (23.12–19) prove that the Book of the Covenant was compiled by Israelite priestly writers; no real prophetic influence is discernible in it. By representing Yahwe as the Deity these Israelite Levitical priests made it possible for the Canaanites, and especially for the Hebrews (non-Israelites) of Shechem or Gibeon to become Yahwe-worshipers and to affiliate with Israel. In this sense this little code was a real "Book of the Covenant" (between the two peoples). This end was furthered by representing Yahwe as speaking in the first person and addressing His people, in the redactional passages, the work of the priestly compilers or editors. This, in turn, led to the concept of Israel as a people holy unto Yahwe (Ex. 22.30). C offers the first Biblical expression of this concept, which later received such a far-reaching development in the writings of Ezekiel and his successors and culminated in the conception of the Torah and in the rise of Judaism.

Menes, *Die vorexilischen Gesetze Israels* (*Beihefte zur ZAW*, 50) (Giessen, 1928). The author attempts to show that from the earliest period of Israel's history the Levites were distinguished from the priests. They were largely leaders of the people's party, as opposed to both priesthood and aristocracy, and had therefore much in common with the early prophets. They composed the Book of the Covenant in support of the prophetic social-reform movement in the Northern Kingdom in the days of Elijah. The author's general argument stands or falls largely with his main thesis of the basic differences between couched in concise, direct form, employs the second person, singular in its address, and deals with a fundamental ritual principle. This type of law we have already designated as a *dabar*.[2]

Ex. 21.2–6 offers a good example of the second class of laws. It deals entirely with a civil matter, viz. the conditions governing the manumission of a Hebrew male slave. It is couched in the form of a conditional sentence or paragraph, with the main condition introduced by כי and all subordinate conditions introduced by אם or ואם. Not infrequently, as in Ex. 21.28–32 for example, it provides a fitting penalty for the person found guilty of the offense with which the law deals. The law employs the impersonal form, expressed by the third person singular, throughout. Obviously to this type of law the technical term, *mišpaṭ*, employed in Ex. 21.1, properly applies.

Of the third type of law the Book of the Covenant offers only a few, but easily recognizable and significant examples. Ex. 21.12, מכה איש ומת מות יומת, is typical. These laws are characterized by extreme conciseness of form and by the use of the participle in the protasis of the condition and, at least in the great majority of the cases before us, by the use of the third person, singular, imperfect, strengthened by the infinitive absolute in the apodosis. For the most part, too, these laws deal with sins or crimes the penalty for which is death. The few instances of this class of law in the Book of the Covenant give no indication whatever either as to its tech-

---

priests and Levites. And it can hardly be said that he has succeeded in proving this. Therefore, despite many incisive and valuable observations, his theory of the literary origin and history of C remains entirely unsubstantiated.

Caspari, "Heimat und soziale Wirkung des alttestamentlichen Bundesbuch," *ZDMG*, 8 (new series) (1929), 97–120. The author divides the Book of the Covenant into four strata, (a) consisting primarily of the *mišpaṭim*, which he holds to be primarily of pre-Israelite, Emorite origin and to have been transmitted to Israel from the kingdom of Sihon through Moabite mediation, (b) additions, consisting largely of the "participial laws" (*ḥuqqim*; cf. Part III of this monograph, to appear in *HUCA*, VIII, 1931), (c) the laws from Ex. 22.9–23.8, and (d) the laws and conclusion in 23.9–33. These last three strata are, so the author holds, of Israelite origin. The evidence is scanty and far-fetched and the argument is anything but convincing, while an almost endless number of significant facts are left unconsidered. The conclusions are therefore altogether unacceptable.

[2] "The Oldest Document of the Hexateuch," *HUCA*, IV (1927), 95.

nical designation or as to its source, whether it had its origin in judicial decision or in some other procedure. These questions will demand consideration later.

Of the fourth class of laws in the Book of the Covenant Ex. 22.20a is typical, גר לא תונה ולא תלחצנו. It too is generally, though by no means invariably, couched in concise, direct form, with its address usually in the second person, singular. Far more frequently than any of the other classes of law, this type is amplified by an explanatory statement, giving the basis or justification for it. These laws deal only with purely ethical matters, with procedures, some of which may well be within the strictly technical and mechanical application of civil law, but which are here obviously regarded as unethical, therefore, impliedly, as contrary to the will of the Deity, and in consequence improper and forbidden. No specific penalty is provided for the disregard of laws of this class; apparently, however, the disfavor of the Deity is implied in every case, and is not infrequently specifically stated in the explanatory amplifications of individual laws. Of the origin and specific designation of these laws the Book of the Covenant likewise gives no indication.

The presence of these four different types of law in the Book of the Covenant was recognized already by Baentsch.[3] However, he distinguishes only between two main groups or types of law, the *dᵉbarim* and the *mišpaṭim*, and regards our third and fourth classes as merely subordinate forms of *mišpaṭim*.[4] Into the important questions of the origins of these various types of law and of the specific names, if any, of our third and fourth types, he does not enter. He concludes, though with but a minimum of evidence and discussion, that the *mišpaṭim*[5] have no original connection with the *dᵉbarim*, that they probably stood originally in E or in

---

[3] *Das Bundesbuch*, 27–38, and especially *Handkommentar*, XLIX ff.

[4] So also the majority of scholars after him. Jepsen, however (102ff.), following to a certain extent Kyle, "A New Solution of the Pentateuchal Problem," *Bibliotheca Sacra*, LXXV (1918), 32–54, distinguishes between four kinds of laws in the Book of the Covenant. To the ritual laws, which, in accordance with both Ex. 24.3–8 and 34.27f., we have designated as *dᵉbarim*, he applies the term *ḥuqqim*, and to his so-called "Sittengesetze" he applies the term *torah*.

[5] Consisting of our second, third and fourth groups of laws.

JE in much the position which is now occupied by Deuteronomy, and that they were removed from there and incorporated into C, as we have them now, by RD. The hypothesis is anything but convincing.

The key to the solution of this problem seems to be furnished by Deut. 5.19–30. These verses give a brief resumé of the incidents following upon the revelation of the Decalogue. Obviously they are based upon the narrative in Ex. 19–20, in the form which it had before the insertion of late Deuteronomic and Priestly elements[6] but after, and this is very significant, the generally recognized redaction of the original Elohist narrative of the revelation at Horeb. This consisted, at least in the main, of Ex. 19.2b–3a, 10aβb–11a, 13b, 14–17, 18bβ–19a[7]; 20.18–19[8],21. This original E narrative told that when Israel arrived at the sacred mountain in the wilderness at which, according to the promise to Moses, recorded in Ex. 3.12, it was destined to meet with the Deity again, the people encamped opposite the mountain, while Moses ascended the mountain into the presence of the Deity, quite naturally, in continuation of the narrative in Ex. 3, to ascertain what the next stage in the Deity's purpose with him and Israel might be. The Deity charged him to return unto the people and to subject them to a strict ritual purification, extending over a three days' period, for at the end of that period they too were to ascend the mountain into His august presence. This Moses did. At the end of the three days of purification Moses led the people forth from the camp and stationed them about the foot of the mountain. But even before this the people, still within the camp, had begun to tremble at the prospect of meeting with the dread Deity. Grouped around the base of the mountain, witnessing the terrifying thunder and lightning and hearing the awe-inspiring sound of the ram's horn, they feared still more and refused to ascend the mountain, as the Deity had commanded. Instead they took their stand far off, and prevailed upon Moses to alone draw near to the Deity, and then to bring back to them the words which the Deity would speak unto him. This Moses did. To him then the Deity revealed the *d^ebarim*, and these Moses in turn brought back to the people.

---

[6] Ex. 19.1–2a, 3b–9, 22, 24.

[7] V. 19b is editorial and harmonistic. However, it is not impossible that originally it may have stood elsewhere in E.

[8] For proof of the late, secondary character of v. 20, cf. Bamberger, "Fear and Love of God in the Old Testament," *HUCA*, VI (1929), 39–54.

However, this original narrative has been significantly modified and reorganized by some later writer or editor, probably RE2. With the transposition of Ex. 20.18–19, 21 to their present position following the Decalogue, the narrative took on a new form and content unknown in the original. It now records that after stationing the people around the base of the mountain, Moses ascended the mountain alone, and there the Deity revealed the Decalogue to him orally. Thereupon Moses descended the mountain to the people and communicated the Decalogue to them. The implication of the narrative in its present form is then that a further, supplementary revelation from the Deity and directly to the people is now expected. But the people fear to hear the voice of the Deity, lest they die, and therefore, request Moses to act again as their intermediary for this subsequent revelation. Accordingly now they withdraw to a distance, while Moses for the second time approaches the Deity, enveloped in darkness, and receives the second, supplementary revelation. This second, supplementary revelation, according to the present form of the narrative, is the Book of the Covenant, Ex. 20.23–23.19. In this way, seemingly, the Book of the Covenant, unquestionably originally an independent writing and older than E, was incorporated into the Elohist Code.

Now it is this narrative in its revised and enlarged form, containing the Book of the Covenant and representing it as secondary revealed legislation, supplementing the Decalogue, which the authors of Deut. 5 had before them. Their narrative accordingly records that upon the mountain the Deity revealed through Moses, though in the sight and hearing of all the people, the entire Decalogue, but no more, and that He likewise inscribed these ten laws upon the two tablets of stone and gave them to Moses. But, terrified by the awful theophany which they had just witnessed, the people fear to hear Yahwe's voice again, lest they perish. Accordingly they beg Moses to act as their intermediary for this supplementary revelation, and their request receives divine approval. The people return to the camp, while Moses alone once more draws near to the Deity, and receives from Him the body of laws which constitutes this supplementary revelation. These laws are of a nature which distinguishes them specifically from the laws of the Decalogue, the primary and basic revelation, in that they are to be observed only after the people enter the land which the Deity is about to give them. According to Deut. 5.28 this supplementary revelation consists of three different kinds of law, designated specifically as *miṣwah*, *ḥuqqim* and *mišpaṭim*.[9]

It is true that Deut. 6.1 seems to imply that this revelation supplementing the Decalogue was the Deuteronomic Code itself, and that therefore, the specification of the laws of this supplementary revelation as *miṣwah*, *ḥuqqim* and *mišpaṭim* applies to the various laws of the Deuteronomic Code. But be that as it may, it is difficult to avoid the conclusion, since unquestionably the Deuteronomic narrative is based upon that of Ex. 19–23 in its present form, that the origin of this three-fold division of the laws of the supplementary revelation is to be found in the Book of the Covenant, and that these three terms, *miṣwah*, *ḥuqqim* and *mišpaṭim* applied originally to the three types of law which we have found in the Book of the Covenant, and which, as we shall see, were actually secondary to and supplementary of its *d^ebarim*. Certainly the division of the Code into these four different classes of law is a much more obvious, simple and practicable matter in C than in D. The *d^ebarim* of C, as we have already seen,[10] constituted its nucleus and, according to its narrative, the actual sole content of the divine revelation upon the sacred mountain to Moses and Israel.

---

[9] So also Deut. 6.1. According to Deut. 4.14 this supplementary legislation consisted only of *ḥuqqim* and *mišpaṭim*. This statement, with the omission of *miṣwah*, may, as we shall see, not only not contradict, but even corroborate the conclusion we are now drawing; for we shall see in time that the *miṣwot* were probably the very latest stratum of C and undoubtedly of post-exilic, Deuteronomic origin. In such case Deut. 4.14 may describe the content of C before the insertion of the *miṣwot*. (Throughout this monograph I employ the term Deuteronomic instead of Deuteronomistic, frequently used by Biblical scholars. I do this because a minute, analytic study of Deuteronomy, conducted with an advanced seminar group over a period of four years, has convinced me firmly that, while the nucleus of Deuteronomy comes from 621 B. C. and constituted the basis of Josiah's reformation, by far the greater part of the book, as well as much related Biblical material, is the work of post-exilic, Deuteronomic writers, representing varying tendencies and points of view. To call these writers Deuteronomistic, and not Deuteronomic, would be misleading.)

There can be no question as to the appositeness of these three terms for the three types of law which we have found in C, supplementing its *dᵉbarim*. As we have seen, C itself designates the one type of law specifically as *mišpaṭim*. Unquestionably our third type of law, characterized by extreme directness and conciseness, invariably expressed in a few, carefully chosen words, is well described by the term *ḥoq*; for etymologically *ḥoq* seems to designate a law which might be engraved[11] upon stone; and certainly a law of extreme brevity would best fit this case. And undoubtedly also the term *miṣwah* best fits the fourth type of law; for these are naught else than ethical commandments, which prescribe no penalties and have no sanction whatsoever, other than that the Deity has commanded them.

At any rate, without at the present moment pressing this matter too absolutely, we may, for the sake of convenience, speak of the four types of law which we have found in the Book of the Covenant as *dᵉbarim*, *mišpaṭim*, *ḥuqqim* and *miṣwot* respectively. Furthermore, the implication of both the narrative in Ex. 19–23 and of the Deuteronomic version thereof is that the *dᵉbarim* alone constitute the basis of the covenant between Yahwe and Israel, while the *mišpaṭim*, *ḥuqqim* and *miṣwot* are supplementary thereto and to be observed by Israel only after entrance into Palestine.

Another matter of primary significance is the position of these various groups of laws in the Book of the Covenant with relation to each other. It is of great moment that the *dᵉbarim* are all found either at the very beginning or at the end of the legal section of the Book of the Covenant, in 20.23–26 and 23.10–19. 22.27–30 may seem at first sight to contradict this statement, but careful analysis of these laws, to be made later, will show that only superficially do they bear the character of *dᵉbarim*, and that actually they are of an altogether different character, pseudo-*dᵉbarim* as it were, and of manifestly late origin.

[10] "The Oldest Document" etc., 54–91.

[11] From חקק.

Into the midst of this group or code of *d^ebarim* the other laws have been inserted bodily. They constitute a definite set of laws within the original code of *d^ebarim*, separating the first half of the *d^ebarim* from the second half. It is a logical conclusion from this significant position of these laws in the midst of the *d^ebarim*, and as an organized body of laws in this position, that they are not original there, but have been inserted through late, editorial processes.

But within this secondary group of laws the relative positions of the various types of law is no less significant. The *mišpaṭim*, with 21.1 as the specific and obviously editorial introduction of this group of laws, extend from 21.2 through 22.16. Within this group 21.12–17 constitute a disturbing element, a small body of laws, closely interrelated in character and content and, for the most part, manifesting all the earmarks of *ḥuqqim*. A detailed analysis of this small group of laws, to follow later in its proper place, will bring to light a number of interesting and illuminating facts bearing upon their origin, literary history and presence in this particular place. But it is equally significant that, as we shall soon see more clearly, this little group of laws is found in a peculiar and disturbing position, in the midst and interrupting the logical unfolding of the thought of a section of *mišpaṭim* dealing with the one general theme of the conditions under which a Hebrew slave might gain his freedom. The conclusion is inescapable that these *ḥuqqim* here, represent likewise an editorial insertion into the body of *mišpaṭim*.

Furthermore, at the very end of the entire body of *mišpaṭim* another little group of laws is found, Ex. 22.17–19, which likewise bears many of the earmarks of *ḥuqqim*. However, again detailed analysis later will show that these are not real, but only pseudo-*ḥuqqim*, and have only the most superficial relation to the group of *ḥuqqim* in 21.12–17. Their presence at the very end of the body of *mišpaṭim*, into the midst of which the little group of *ḥuqqim* in 21.12–17 had obviously already been inserted, stamps them emphatically as a late, editorial addition or supplement to the *ḥuqqim-mišpaṭim* group of laws in 21.1–22.16.

Finally, at the very end of this entire body of laws, *mišpaṭim*, *ḥuqqim* and pseudo-*ḥuqqim*, 21.1–22.19, and intervening between it and the latter half of the *dᵉbarim*, we find the entire group of *miṣwot*, 22.20–23.9. We shall see that this group in its present form is by no means a literary unit, but manifests unmistakable signs of editorial expansion. Yet the fact that this body of laws begins and ends with the same ethical injunction on behalf of the foreign-born sojourner in Israel suggests perhaps that, editorially at least, this group of ethical laws constitutes a literary unit of a certain kind. And its position, as an appendix, as it were, to the *ḥuqqim-mišpaṭim* group, following even upon the little body of pseudo-*ḥuqqim*, and immediately preceding the second half of the *dᵉbarim*, suggests that these *miṣwot* were appended to the *ḥuqqim-mišpaṭim* group comparatively late, and after that body of laws had already taken definite shape.

Midway within this body of *miṣwot* we meet the group of laws, 22.27–30, which we have already characterized as pseudo-*dᵉbarim*. That these are no true *dᵉbarim* and were never a part in any way of the original *dᵉbarim*-code of C, will be proved conclusively in due time. But the very presence of this little body of pseudo-*dᵉbarim* in the midst of the *miṣwot*, seemingly the very last group of laws to be incorporated into C, tends to indicate that these pseudo-*dᵉbarim* are a very late and somewhat anomalous insertion into this code of laws.

The relative position of these various kinds and groups of laws within the C code then points to the following general conclusions with regard to the literary history of this portion of C. The *dᵉbarim* in 20.23–26 and 23.10–19, or rather the original *dᵉbarim* of which these are the survivals,[12] constituted the nucleus of the C code. Into this a body of *mišpaṭim*, with its own specific, editorial introduction, 21.1–11, 18–22.16 was subsequently inserted. Hand in hand with this and obviously the work of the same editor was the insertion of the words ואת כל המשפטים in 24.3a.[13] Moreover, that this editorial insertion mentions only the *mišpaṭim* and ignores the two other types of law which we have noted in the C code, indicates that these *mišpaṭim* alone were inserted as a body into the original *debarim*-nucleus of C and that the other types and groups of laws were inserted still later, and only after the *mišpaṭim* had come to be regarded as an integral part of C. This precludes the possibility of the hypothesis that the body of *mišpaṭim-ḥuqqim-miṣwot*, or even the *mišpaṭim-ḥuqqim* alone, might have come into being first and then have been incorporated together and as a closed body into the original C code. It is clear that these editorial processes and expansions went on within, and not without, the code.

---

[12] Cf. "The Oldest Document" etc., 91.

[13] That these words are an editorial insertion into the verse is clear from the fact that 24.4b refers only to the *dᵉbarim* of 24.4a (cf. both הדברים and דבר) and ignores the *mišpaṭim* completely.

A second general stage in the editorial expansion of the C code is marked by the insertion of the *ḥuqqim*, 21.12–17, into the midst of the *mišpaṭim*, and, as we have intimated, into a seemingly illogical position there. The reason for this we shall determine later. A third editorial stage is represented by the appending of the little body of pseudo-*ḥuqqim*, 22.17–19, to the *mišpaṭim*. The addition of the *miṣwot*, 22.20–26; 23.1–9, marks the fourth general stage, while the insertion of the little group of pseudo-*debarim*, 22.27–30, into the midst of the *miṣwot* marks the fifth and final general stage of editorial expansion of this code. It should be understood that each of these editorial processes was altogether general in character, and that within each we find unmistakable evidence of secondary editorial handiwork.

In addition to these various types of law in the Book of the Covenant, each seeming to mark a successive editorial stage in the gradual expansion of this document, we find frequent evidences of Deuteronomic editorial handiwork. Baentsch has already called attention to this fact.[14] It is, however, probably not without significance that these Deuteronomic editorial expansions of and comments upon the various laws are found chiefly in connection with the *miṣwot*, to a limited extent likewise with the *debarim*, and but seldom, if at all, with the *mišpaṭim* and *ḥuqqim*.

As for the period of literary composition and editorial expansion of the C code, it is self-understood that the earliest possible date is 842 B.C., the date which we have fixed for the composition of the original *debarim*-code.[15] For the *terminus ad quem* we have not only the evidence of the Deuteronomic expansions, just referred to, but likewise the fact that the author of Deut. 22.1–4 must have had Ex. 23.4f. before him both in its present form and in its present position in C. On the one hand, we shall see that Ex. 23.4f. represents a late and disturbing insertion into the group of *miṣwot* in C. But on the other hand, Deut. 22.1–4 is unquestionably a late editorial insertion into D, the product of the post-exilic, and probably not even the very earliest post-exilic period. We must conclude therefore, that the legalistic section of the Book of the Covenant, Ex. 20.23–23.19 is the result of a steady process of accretion and editorial expansion extending over a period of three hundred and fifty or more years, from 842 B. C. until well into the post-exilic period. Further proof of this general conclusion as well as additional light upon the literary history of the Book of the Covenant and its historical and cultural implications will be gained from the detailed, analytic consideration of the various types and groups of laws contained in it. And having already made just such a study of the *dᵉbarim* of C, it will for various reasons be well to begin our present task with the consideration of the *mišpaṭim*.

---

[14] *Handkommentar*, XLVIIff.

[15] Cf. "The Oldest Document" etc., 115ff.

II. The *Mišpaṭim*

It is of course self-apparent that, as has been said, 21.1 is editorial, the work of the editor who inserted the *mišpaṭim* into the midst of the original *dᵉbarim*-nucleus of the C code. The *mišpaṭim* proper are found in Ex. 21.2–11, 18–22.16. As has been said, their form is unmistakable. They are couched invariably in the form of a conditional sentence or paragraph. The main condition is introduced by כי or וכי and each subordinate condition by אם or ואם.[16] Within a *mišpaṭ* there may be a considerable number of such subordinate conditions, each introduced in precisely the same manner. The verb is invariably in the third person, singular. The *mišpaṭim* deal entirely with matters of civil law and, as we shall see, clearly represent the decisions of courts or other responsible legal authorities or else the formulation in legal form of long-established, deeply-rooted and generally accepted customs, frequently with far-reaching and complex ramifications.

---

[16] 21.31 and 36, in which the subordinate condition begins with או, are the only exceptions. Not improbably, however, או is a textual corruption for an original אם or ואם. Jepsen (55f.) attempts to inject into the differences between כי and וכי and אם and ואם a meaning far greater than the facts justify. If we bear in mind that the ו in both וכי and ואם must, at least in the majority of cases, be translated "but" rather than "and," the meaning of these various *mišpaṭim* will be perfectly clear, even without Jepsen's hypothesis.

Careful consideration of such a complex *mišpaṭ* as that in Ex. 21.2–6, in which, in addition to the main condition and the general principle in answer to it, both stated in v. 2, there are four subordinate conditions, establishes one thing beyond all possibility of doubt. Such a *mișpaṭ* is not the result of one, single judicial decision. It represents in the first place the statement of a general principle or custom in v. 2 and likewise the application, in v. 6, of what was in all probability an ancient, long-observed folk-practice. But in addition to this, the various subordinate conditions within the *mišpaṭ* represent undoubtedly the decisions of legal authorities in different and successive periods, in specific cases growing out of the application of the general principle stated in the main condition in v. 2. This same procedure holds true with the complex *mišpaṭ* in vv. 7–11, likewise consisting of a principle condition and the response to it, in v. 7, and four subordinate conditions, each representing a specific exception to the application of the general principle. Other *mišpaṭim* which follow manifest a similar complex nature.

It is clear that these *mišpaṭim* do not represent direct judicial decisions as such. Rather they are the result of processes of recording, editing and codifying such decisions. These *mišpaṭim* possess a literary form as well as a complex content which permit no other conclusion. Each *mišpaṭ* is well organized within itself, and, as we shall soon see, the different original *mišpaṭim* bear to each other a relationship so logical and systematic as to be explicable only on the assumption that they have been extracted from some well organized corpus of ancient Israelite civil law. On the other hand, these *mišpaṭim* which we find in this little C code are in themselves too few in number and cover too limited a range of subjects to permit the conclusion that they represent a complete corpus of civil law, such as, as we shall learn, must undoubtedly have once existed in ancient Israel. For example, as we shall see, the *mišpaṭ* in 22.15f. is but one of what must once have been a considerable group or section of closely related *mišpaṭim* governing the procedures in marriage and the rights of women, such as we have likewise in Deut. 22.13–29. Unquestionably therefore these few *mišpaṭim* in C constitute but a small fragment of an ancient Israelite corpus of civil law, which may have been of quite considerable extent.

Baentsch and most scholars after him, divide the *mišpaṭim* into three main sections,[17] laws dealing with slaves, 21.2–11, laws designed to protect human life, 21.12–32, and laws dealing with the protection of property, 21.33–22.16. Superficially this classification seems correct. But a careful analysis will, we believe, show that these *mišpaṭim* had an altogether different organization originally, one far more logical and systematic and more illuminating as to the original form and character of this peculiar group of laws. Thus, for example, the *mišpaṭim* in 21.20f. and 26f., which Baentsch classifies as laws designed to protect human life, are actually far less such than laws which, precisely like the *mišpaṭim* in 21.2–11, establish the conditions under which a Hebrew slave gains his freedom. Furthermore, the *mišpaṭ* in 21.26f. follows so logically in its thought upon the *mišpaṭ* in 21.20f. that it is difficult to avoid the conclusion that in the original corpus of *mišpaṭim* these two must have stood in immediate juxtaposition. On the other hand, the *mišpaṭ* in 21.22–25, which intervenes between them, has so little connection in thought with either what precedes or what follows, that we cannot but regard it as an intrusion here. And if we recognize 21.12–17, the little group of *ḥuqqim*, and also the *mišpaṭ* in vv. 18f., closely connected with these *ḥuqqim*, as we shall see, likewise as secondary matter here, it follows that in the original form of 21.2–27 we have one long paragraph of *mišpaṭim*, unmistakably a complete section extracted from an ancient Israelite corpus, dealing with the rights of Hebrew slaves in relation to their masters, and particularly with the specific question of the conditions under which a Hebrew slave gained his or her freedom. Into this original section two groups of unrelated laws have intruded, vv. 12–19 and 22–25. It is these two secondary groups of laws which led Baentsch and others to the conclusion that their second section of *mišpaṭim* dealt with the protection of human life. But to reach this conclusion they were obliged to assume that the *ḥuqqim* were of an origin and nature altogether identical with those of the *mišpaṭim*, and to designate them likewise as *mišpaṭim*, an altogether unjustified procedure, as we shall see. With these secondary passages in this section omitted, we have a well organized, logically unfolding group of slave laws, dealing with the general theme of the manumission of Hebrew slaves.

---

[17] *Handkommentar*, 188.

Quite similarly, in 21.28–22.14 we have a systematically organized group of *mišpaṭim* dealing, not as Baentsch and other scholars would have it, partly with the protection of human life and partly with the protection of property, but dealing altogether, and with a thoroughly logical arrangement, with regulations governing the keeping of oxen and other domestic animals. This section, in its original form, consisted of four *mišpaṭim*, (1) 21.28-32, 35–36, a complex *mišpaṭ*, consisting of a main condition and seven subordinate conditions, all dealing with the problem of the ox that gored;[18] (2) 21.37; 22.2b–3, a simple *mišpaṭ*, with one main and two subordinate conditions, dealing with the question of the penalty for the theft of a domestic animal; (3) 22.9–12, a simple *mišpaṭ*, with one main and two subordinate conditions, dealing with the question of responsibility and damages in the case of a domestic animal belonging to A and entrusted for safekeeping to B, which dies or is stolen or lost or injured while in B's custody; and (4) 22.13–14, another simple *mišpaṭ*, with one main and two subordinate conditions, dealing with the question of responsibility and damages in the case of a domestic animal borrowed or hired by B from A. The interrelationship, unity and systematic, progressive arrangement of this little body of *mišpaṭim* is almost self-evident.

And just as into the previous section of *mišpaṭim* dealing with slaves, so also into this original section dealing only with domestic animals several additional *mišpaṭim* have been inserted, due to a superficial relationship in subject matter. First of these is the *mišpaṭ* in 21.33ff. dealing with the question of responsibility and damages in case A digs a cistern and neglects to take proper precautions, and a domestic animal, specifically an ox or an ass,[19] falls into it and is killed. Other than for the superficial fact that this *mišpaṭ* too deals with the question of damages in case of the loss or death of a domestic animal through the irresponsibility of some one other than its owner, it has no connection whatever with this group of domestic animal *mišpaṭim*. It might not have been out of place at the very end of this section; and had we found it there we would undoubtedly have concluded that in that place it was integral and original. But in its present position, where obviously it disturbs the logical and orderly continuity of the single *mišpaṭ* into the midst of which it has been inserted, the conclusion is unavoidable that it is distinctly out of place and disturbing, and is therefore secondary.[20]

---

[18] In v. 35 read with LXX יגח for יגף and in vv. 31 and 36 most probably אם for או.

Moreover, it is clear why this *mišpaṭ* was attracted to this particular place. It was undoubtedly because of a seemingly close resemblance and relationship, not to the portion of the *mišpaṭ* which precedes, but to the portion which follows. This *mišpaṭ* provides that if A digs a cistern but neglects to cover it properly and B's ox or ass falls therein, A must pay B the value of the dead animal, but the carcass becomes in consequence his property. Vv. 35f., originally, as we have just seen, an integral part of the *mišpaṭ* beginning with v. 28, but now, as the result of editorial revision, seeming to be an independent *mišpaṭ*, provide that if

---

[19] I. e. the larger domestic animals which, if they fell into the cistern, could be drawn out only with great difficulty and presumably seriously injured, if still alive at all. The smaller domestic animals, sheep and goats, might fall into a cistern and be drawn out more easily and with less probability of serious injury.

[20] As the result of this insertion the original אם, which introduced the subordinate condition in v. 35, has been changed editorially to וכי, with the resulting impression that vv. 35f. are a new and independent *mišpaṭ*. However, the connecting particle ו in וכי is in itself probably significant. Similarly in 22.2b שלם ישלם is in all likelihood editorial, repeating, as it does, the ישלם of 21.37. This repetition is almost necessitated by the long, editorial insertion of the *mišpaṭ* in 22.1–2a, likewise into the midst of the original *mišpaṭ*.

A's ox gore the ox of B so that the latter dies, the living animal must be sold and the proceeds and also the carcass of the dead animal must be divided between A and B. But if A's ox was known to gore habitually and A did not take proper precautions with it, then A must pay B ox for ox, but the carcass of the dead animal A keeps. The procedure in this second case parallels almost exactly that in vv. 33f. Undoubtedly it was just because of this parallelism that vv. 33f. were introduced into just this particular position. The significant fact here is that the secondary passage is inserted before, and not after, the passage similarity with which attracted it to just this particular place. We shall have several other instances of the insertion of secondary *mišpaṭim* in places immediately *preceding* those primary *mišpaṭim*, superficial similarity with which suggested their insertion. This seems to have been a regular, even though not an absolutely uniform procedure of these editors.

There can be no doubt whatever that 22.1–2a is an editorial insertion into the middle of an original *mišpaṭ* with which it has at the most only a very superficial connection. This fact has been clearly recognized by Baentsch[21] and other scholars after him. The original *mišpaṭ* dealt with the question of the penalty to be imposed upon a thief for stealing a domestic animal. The insertion deals with the altogether unrelated question whether, if a thief be killed while in the act of breaking in, presumably into a house, there should be blood-revenge or not. The relationship is, of course, only superficial, in that both pieces of legislation deal with the punishment of thieves. The insertion beclouds the real meaning and logical development of the original *mišpaṭ*. Only with its removal does the purport of the original *mišpaṭ* become clear. But the very fact that other Biblical scholars have likewise recognized 22.1–2a as a secondary insertion, as it were a *mišpaṭ* within a *mišpaṭ*, confirms our claim that other passages, complete *mišpaṭim* in themselves, may likewise well be secondary insertions into the original body of *mišpaṭim*.

There can accordingly be little question that 22.6–8 likewise constitutes a secondary insertion into the original body of domestic animal *mišpaṭim*. 22.9–12, as we have seen, deals with the various legal questions arising from the entrusting by A to B of domestic animals for safe-keeping, and of something happening to them, death, injury, or capture by marauders, which prevents their eventual safe return to A, while there are no witnesses to substantiate B's claim of irresponsibility in the matter. 22.6–8 deals with precisely the same questions and issues in the case of the entrustment by A to B of immobilia. It is beyond question that 22.6–8 interrupts the logical course of development of the domestic animal *mišpaṭim*, and is therefore a secondary insertion here. And it is significant that again the inserted passage precedes the *mišpaṭ*, similarity with which attracted it to its present position in this code.

---

[21] *Handkommentar*, 197.

In the light of all this evidence there can likewise be no further hesitation in finally setting down as secondary insertions 22.4f., two simple *mišpaṭim* dealing with the questions of responsibility and damages in the cases of A's cattle pasturing, and thereby doing damage, in B's field, and of a fire, kindled by A, spreading to the field of B.[22]

22.15f. is a simple *mišpaṭ*, with one main and one secondary condition, dealing with the question of the seduction of an unbetrothed maiden and the penalties therefor. It stands entirely alone here, with no connection at all with the *mišpaṭim* which precede. A *mišpaṭ* of similar character, and obviously related, even though dealing with a slightly different circumstance, is found in Deut. 22.28f. There, however, it is merely one of a systematically organized body of *mišpaṭim* all dealing with legal questions and issues arising out of marriage, and specifically out of improper sexual acts in relation to marriage. In the light of this fact, and also of the evidence which has led us to the conclusion that the other original *mišpaṭim* in C dealt with two main themes, the manumission of Hebrew slaves and legal questions relating to the possession of domestic animals, we may safely infer that Ex. 22.15f. was likewise extracted from an ancient corpus of *mišpaṭim*, and from a section thereof dealing with problems related to women and marriage. Not improbably, as we have already intimated and shall soon establish convincingly, the body of related *mišpaṭim* in Deut. 22.13–29 was derived from the same source.

---

[22] For the probable reasons for and the processes of attraction of these two *mišpaṭim* to this particular place, cf. below, pp. 101–105.

More detailed analysis of the individual *mišpaṭim* will bring to light additional facts of interest and significance, which will enable us to understand still better the manner in which the C code gradually assumed its final form.

21.1 is, as has been said, obviously editorial, the work of the editors who inserted the *mišpaṭim* midway in the body of the original *debarim*-code of C. The verse manifestly represents the address of the Deity to Moses. Quite clearly too the verse represents Moses as standing alone in conference with the Deity, and away from the people. The situation is therefore the same as that in Ex. 20.18–19, 21, in their present, edited form.[23]

In 21.2 the use of the second person, singular, תקנה, in place of the third person singular, כי יקנה איש, usually, or, with this one exception, invariably employed in the *mišpaṭim*, is undoubtedly editorial, the result of attraction to תשים in 21.1.[24] 6aβ, והגישו

---

[23] Cf. above, p. 25.

[24] Jepsen (76ff., following Jirku, *op. cit.*, 94) makes great capital out of the term עברי in v. 2. He argues that the use of this term here is strange, since, on the one hand, this is supposedly employed in the Bible only in the mouth of a foreigner when referring to an Israelite, or in the mouths of Israelites speaking of themselves when addressing a foreigner, or when Israelites are contrasted with foreigners. Therefore, he holds, had this law originally intended to refer only to an Israelite slave, some other term would undoubtedly have been employed, some such term no doubt as ישראלי (although this adjective is employed in only one, and that seemingly a quite late Biblical passage, Lev. 24.10f.; II Sam. 17.25 is corrupt; cf. I Chron. 2.17) or בן ישראל or אשר מבני ישראל. That instead עברי is used, implies therefore an altogether different and far larger original connotation than "Israelite." It means "Hebrew," synonymous, of course, with the Chabiri of the Tell-el-Amarna tablets, and in theory with the implication of the tradition of the descendants of Eber in Gen. 10.25ff. This *mišpaṭ*, he argues further, must come therefore from his assumed pre-Israelite, "Hebrew" source, his imaginary, original Emorite code. The use of this term here constitutes one of the strongest props of his entire hypothesis of this pre-Israelite, "Hebrew" source. The argument itself, as well as the far-fetched and far-reaching hypothesis based upon it, are so preposterous and unevidenced that they hardly merit serious consideration. Obviously this exposition of this term is designed to bolster up a preconceived and weak hypothesis.

אל הדלת או אל המזוזה, is undoubtedly an editorial gloss, explaining to an age which no longer understood the full implication of the term and of the associated ceremony, exactly what אל האלהים

Actually the argument is not at all new. It was advanced already by a number of mediaeval Jewish exegetes, even though they did not know as yet of the Chabiri. This argument was, however, fully discussed and completely refuted by Ibn Ezra in his commentary to this passage.

It is true, as Jepsen claims, that Deut. 15.12, in which העברי is in apposition with אחיך, is dependent upon this passage here, and that Jer. 34.9, in which עברי is interpreted as synonymous with יהודי, is, in turn, dependent upon Deut. 15.12. Accordingly they prove no more than that by the time of Jeremiah the term עברי had come to designate only an Israelite (so also Jepsen, *op. cit.*, 24, note 5). But the facts are that nowhere in the Bible, in the older as well as in the later portions, does עברי connote aught but Israelite, and that not infrequently the term was used with reference to Israelites when no apparent reason existed for its use in preference to בן ישראל or בני (cf. Gen. 14.13; Ex. 2. 11, 13; 5.3 [synonymous with ישראל in v. 1; both terms are employed in Moses' address to Pharaoh, a non-Israelite]; I Sam. 13.3, 7 [corrupt?]; 14.21). In other words, the two terms עברי and בן ישראל seem to have been synonymous and fairly interchangeable.

Actually Jepsen admits (*op. cit.*, 24) that this law here deals only with the Israelite slave. He argues, however, that if Hebrews, i. e. Chabiri, lived long in Palestine, they must have developed their own legal system in time, and that later, when Israel came into contact with these Hebrews, Israel must have taken over these laws; therefore עברי here, meaning originally, under the pre-Israelite Hebrews, a Hebrew, though later, under the Israelites, designating an Israelite specifically. It is a poor argument which does not work both ways. Certainly, if the Hebrews, after living long in the land, must have developed their own laws, then the Israelites too, after living sufficiently long in the land, and that much longer than the Hebrews, assuming, as Jepsen seems to do, that these latter were altogether distinct from the Israelites, must have developed their own laws also; and this very law, even despite the use of עברי may just as well have been of Israelite as of supposed Hebrew origin. Or, *per contra*, if the Israelites had to borrow this and other laws from the Hebrews, then equally we must assume that these Hebrew invaders did likewise. Actually Jepsen assumes this with his hypothesis of an original Emorite code. But surely these Emorites, even if they had actually known the Hebrews, had no reason to provide by law for treatment of a Hebrew slave different than that accorded other non-Emorite slaves. And furthermore, were not the Israelites Chabiri or Hebrews too?

The whole difficulty which Jirku, Jepsen, Caspari and others experience and which leads them to spin out their ingenious hypotheses, is in the use of the term עברי here instead of some other, supposedly more specific term such as ישראלי. But is there actually any difficulty or problem here? What term implied.[25] But it is certain that this editorial gloss was pre-Deuteronomic, for it is just this interpretation to which the Deuteronomic revision of this law took objection and suppressed. Obviously this gloss here came from the pre-Deuteronomic period which, as yet, found nothing contrary to Yahwe-worship in the cult of the household deities at the threshold of the house. Moreover, the insertion of this gloss here necessitated the editorial repetition of אדניו after ורצע. With these glosses omitted the verse reads much more smoothly and is simpler and more direct in its statement.

It is almost self-evident that the procedure prescribed here for the manumission of Hebrew slaves has no connection whatever with the so-called *šemiṭṭah* or Sabbatical year of Deut. 15.1–18. In fact C knows of no *šenat hašemiṭṭah*, no Sabbatical year, as such. In 23.10f. it provides merely that each individual field shall be tilled for six years in succession and that every seventh year it shall be allowed to lie fallow, while its produce was during this year taboo to its owner. In the same way this *mišpaṭ* provides that a Hebrew slave shall serve for a period of six years from the moment when he enters into the slave state, regardless of when this may begin. Not until the Deuteronomic legislation did the Sabbatical year become a national institution,

---

other than עברי could have been used here with equal convenience? בן ישראל or אשר מבני ישראל would have been quite awkward. And from the single authentic and late instance of ישראלי(ת) we may conclude that this was a late and rather artificial and unreal formation of the gentilic. Apparently עברי was the word used regularly in Biblical literature for the gentilic of בני ישראל. And if so, then the use of the term here offers no problem whatsoever, and the entire theory of "Hebrew" laws loses one of its main supports.

[25] Eduard Meyer (*Die Israeliten und ihre Nachbarstämme*, 475, note 2; followed by Gressmann, in *ZAW*, 40 [1922], 102) argues that in the cult of a great deity, such as Yahwe, a household ceremony such as this would not have been tolerated, and that therefore והגישו אל האלהים is a doublet of והגישו אל הדלת או אל המזוזה, and implies the transfer of the ceremony from the house, where it was originally performed in the cult of the household deities, to the Yahwe-sanctuary. But was not the Passover celebration, as prescribed in Ex. 12, in both the J and P strata thereof, also a household ceremony? Nevertheless, whatever its origin may have been, is it not represented as an important rite in the cult of Yahwe? And granting that this ceremony here was performed originally in honor of the household gods and was then, with

observed by the entire nation simultaneously.[26] But even then the institution dealt only with the release of debts. The older institution of allowing the fields to lie fallow every seventh year was disregarded completely by the Deuteronomic legislators, either because they had no interest in it, or perhaps because they were conscious of a certain non-Yahwistic origin of the institution, and by their silence sought to suppress it. And the other old institution of the release of Hebrew slaves at the end of six years of servitude the Deuteronomic legislators allowed to remain as it had been from the beginning, with as yet no connection with any one single year of release of slaves by the entire nation.[27]

Vv. 7–11 deal with the special case of the Hebrew maiden sold by her father as an *'amah*, i. e. a female slave, who, in addition to performing various duties of physical labor, is also subject

---

evolving religion, taken over by the cult of Yahwe, it follows none the less that before the ceremony would be transferred to the Yahwe-sanctuary it would continue to be performed for a time still at home, though now as a Yahwe-rite. Just this is the stage of development of this ceremony apparently mirrored in Ex. 21.5f. Moreover, if Meyer's explanation were correct, then why the omission of והגישו אל האלהים in Deut. 15.17? We would expect to find an explicit reference to Yahwe substituted for the original reference to the household gods. But instead of that, the ceremony in Deut. 15.17 is still performed at the home and at the very same spot as in Ex. 21.5f. But in characteristic Deuteronomic manner the reference to the old household gods has been carefully suppressed. And since we may not assume, in the light of Deut. 15.17, that this ceremony was first transferred from the house to the Yahwe-sanctuary, and then, with the Deuteronomic institution of the single, central sanctuary, back to the house, it follows that it was never aught but a house-ceremony, and that Meyer's hypothesis has no validity whatever. This is corroborated by the fact that in Ex. 21.5 והגישו אל הדלת או אל המזוזה follows והגישו אל האלהים instead of preceding it, as Meyer's hypothesis would imply. Cf. also Hempel, *Die Schichten des Deuteronomiums*, 210, note 3.

[26] Cf. Deut. 15.1, 9; 31.10.

[27] Jer. 34.8ff. has in mind, not a regular release of Hebrew slaves in a nationally observed Sabbatical year, but a national release of slaves due to the fact that the institution had apparently been disregarded for many years, and therefore the number of Hebrew slaves who should have been released long before had become very considerable. However, it is clear from the language of v. 14 that this action recorded in Jer. 34 was based upon the legislation in Deut. 15.12–18 rather than upon that in Ex. 21.2–6.

to concubinage on the part of her master.[28] It is this fact of concubinage which naturally necessitates a different procedure with her than with the male slave. Therefore, v. 7 states the general principle, the basis of this entire *mišpaṭ*, that a female Hebrew slave does not secure her freedom[29] in the same manner as a male slave.[30] The *mišpaṭ* then proceeds to specify what seem to have been the only conditions under which a female Hebrew slave could secure her freedom. These were apparently three; (1) if, after acquiring her as his slave, and intending to use her himself as a concubine,[31] the woman becomes displeasing to her master, then he must let her be redeemed, i. e. he must offer to restore her to her family upon payment of a certain sum of money; whether, however, the original purchase price or something less, the text does not specify.

---

[28] Note that Hebrew has no word עֲבָדָה (feminine of עֶבֶד), i. e. merely a female slave who performed all manner of labor, but was in theory not subject to concubinage; cf. also my "*Beena* Marriage (Matriarchat) in Ancient Israel and Its Historical Implications," *ZAW*, 6 (new series) (1929), 101, note 5. It is perhaps noteworthy that Deut. 15.17, which is dependent upon Ex. 21. 7–11, continues to use the term *'amah*, but that Jer. 34.8ff., which is in turn dependent upon Deut. 15.12ff., uses instead *šifḥah*. It would, however, be precarious to infer, as does Baentsch (*Das Bundesbuch*, 65), that there was any difference of rank, dignity or character of service between the *'amah* and the *šifḥah*, and that in particular the *šifḥah*, in contradistinction to the *'amah*, was not used by her master for sexual purposes. (For the originally sexual character of the service of both the *šifḥah* and the *'amah* cf. my "*Beena* Marriage [Matriarchat] in Ancient Israel and Its Historical Implications," *ZAW*, 6 [new series] [1927], 99ff.).

[29] תצא, a contraction of the full תצא לחפשי as in vv. 2 and 5; cf. also vv. 3, 4 and 11.

[30] I. e. at the end of six years of servitude. This *mišpaṭ* is, of course, abrogated completely, at least in intention, by the obviously later, Deuteronomic *mišpaṭ* in Deut. 15.12ff., which prescribes exactly the same manner of release for the female Hebrew slave as for the male, viz. in the seventh year.

[31] The temptation to read ידעה for יעדה and לא according to the *k*^{e}*tib* instead of לו according to the *q*^{e}*re*, which Budde has proposed (*ZAW*, 11 [1893], 102), and in which the majority of Biblical scholars have followed him, is tempting indeed. But, as Ibn Ezra has explained, and as Jepsen (*op. cit.*, 28, note 1) has proved even more conclusively, the reading of MT with the *q*^{e}*re*, לו יעדה, must be retained. Only thus does the contrast between אם לבנו ייעדנה in v. 9 and אם אחרת יקח לו in v. 10 become fully comprehensible. Moreover, the thought of v. 10, that if the master takes another concubine slave alongside of the first, the latter must still receive her full due of sexual gratification, precludes absolutely the possibility of Budde's proposed emendation.

Or (2) if, instead of intending her for his own sexual use, he purposes to give her over to his son, though whether that was the intention originally at purchase or a later development, the text does not indicate, then she shall be treated after the manner of free maidens.[32] Just what the treatment of free maidens was, is not stated, but obviously it was so well-known and established that no further specification was necessary. But since the *mišpaṭ* as a whole deals with only the one theme, the manner in which a female Hebrew slave acquires her freedom, then this particular provision of the law can have only one meaning, viz. that if the son for any reason does not like the woman, then she is to be treated as any free woman would be, in that she receives from her husband a bill of divorce[33] and goes free directly in the customary manner of a divorced wife, but under no condition may she revert to the father, her actual purchaser, who would himself then use her as his own concubine. This implies, in other words, that in case a man buys a female Hebrew slave, with the purpose of giving her to his son, she is to be treated in every way as a free woman; in other words, the transaction is to be regarded in every way as identically the same as the purchase of a free maiden to become the wife of the son, and the money paid for her is considered as the regular *mohar* or purchase-price paid for a bride to her parents.[34]

[32] For בנות, "free maidens," cf. the contrast between איש, "free man," and עבד, "slave," in vv. 20 and 26 and especially in 28–31, and note especially the threefold classification in these last verses, איש או אשה, "adult man or woman," בן או בת, "minor free male or female," and עבד או אמה, "male or female slave."

[33] Cf. Deut. 24.1.

[34] Actually therefore what this verse forbids is exactly the same practice which is denounced as incestuous and absolutely forbidden in Lev. 18.15 and Deut. 27.23, viz. sexual intercourse between father-in-law and daughter-in-law. This makes clear the full and exact implication of the injunction, "after the customary manner of free maidens shall she be treated." Unquestionably it means to imply that in case the woman proves displeasing to the son, of course after the marriage has been consummated, the father may not, just

Or, (3) if the master take a second slave-concubine alongside of the first, he must still provide the first with her full due of food, clothing and sexual gratification; if he fails to comply with these three obligations, then she goes free without any payment whatsoever, of course on the part of her family; in other words, no part of her original purchase-price need be restored to her husband-master.[34a]

That this is the correct and the only possible explanation of this *mišpaṭ*, is proved by Lev. 19.20–22. We have there, so it seems, another *mišpaṭ*, but couched in the form characteristic of the Priestly Code.[35] It consists of the protasis of the condition, stating the general principle of the *mišpaṭ*, and the apodosis, giving the penalty involved. But here the protasis does no more than to assume the very *mišpaṭ* of Ex. 21.7–11, or rather two-thirds of it, two of the three conditions under which a female Hebrew slave should have acquired her freedom,[36] and then raises this question: In case a female Hebrew slave should have acquired her freedom from her master for one of these two reasons, but this freedom has not been granted to her, but nevertheless, she permits another man to have sexual intercourse with

---

because he has acquired the woman as a piece of property and is desirous of retaining possession of her, take her as his own concubine. Instead she must be treated exactly as a free maiden would be treated under similar circumstances, viz. receive a formal divorce in the ordinary manner.

[34a] For similar conditions and practices obtaining in the system of acquisition and use of female slaves in Nablous, cf. Jaussen, *Naplouse*, 129f.

[35] I. e. instead of beginning with כי followed by the verb in the third person singular and then the subject, usually נפש or איש, the Priestly *mišpaṭim* generally take the form . . . . איש כי; cf. Lev. 13.29, 38, 40; 15.2, 5, 16 and *passim* in Pt and Ph; also Lev. 21.9 and likewise Ezek. 18.5; cf. also Jirku, *Das weltliche Recht im Alten Testament*, 39, 42f., 60f., 76f. Jirku has, however, apparently failed to grasp the real import of this matter.

[36] Viz. the first and third reasons, according to the above analysis. There was, of course, no ground for referring to the second reason here, for, since the female Hebrew slave, given to the son of her purchaser, was regarded in every way as a free-born woman and therefore a wife in the fullest sense, she could not be included in the provisions of Lev. 19.20–22, which dealt only with the case of sexual intercourse with an *'amah*, a slave-concubine, who should have received her freedom. The other case would, of course, have been one of downright adultery, a far more serious offense, to be dealt with of course, in accordance with the provisions recorded in Lev. 20.10.

her, what shall be done? According to the *mišpaṭ* in Deut. 22.22, which was undoubtedly the general law of the land, and also to Lev. 20.10, had she been recognized as the actual wife of her purchaser, this would have been a case of adultery, and both adulterers would have been put to death. Presumably the same condition would hold true also in the case of the slave-concubine of a man found guilty of intercourse with another man. Certainly her master would have had the right to have at least his slave put to death or to collect damages from her paramour for the evident violation of his property rights in the woman. But instead Lev. 19.20–22 apparently says practically this, that in the aforementioned case the master of the woman has no right to have her executed or to collect damages, for he has no longer any legal claim upon the woman whatsoever, since her freedom should have been granted to her completely, for one of the two reasons stated; and as a free woman she would have had the right to dispose of her favors to whomever she pleased. Consequently only a moral, and not a legal offense has been committed; therefore, the sinning man shall bring a guilt-offering and thus expiate his sin.[37]

---

[37] Perhaps this suggests the meaning of the otherwise inexplicable בקרת in v. 20; or perhaps it even suggests two possible meanings, (a) that proposed by Ehrlich (*Randglossen zur hebräischen Bibel*, II, 66), viz. "there shall be a distinction," i. e. a different and milder procedure in this case, because of the extenuating circumstances. Ehrlich supports this interpretation by reference to Lev. 27.33. To this he might well have added II Ki. 16.15, where לבקר may be translated "for special use," i. e. "for use on special or distinctive occasions." (Certainly the customary translation of לבקר here, "for further consideration," is incorrect; for the context undoubtedly implies that Ahaz knew exactly what he was doing and had a definite purpose in mind in removing the brazen altar from its original position and setting it in its new place, just north of the main altar); or (b) "investigation," viz. that there should be an investigation, as was in fact absolutely necessary, to determine the truth of the claim which the woman would undoubtedly make in self-defense, that she had full right to dispose of her favors to whomever she pleased since she was entitled to her freedom, according to the provisions of Ex. 21.7–11. Whether her first master had actually failed in his duties to her, and particularly in that of providing her with her due of sexual gratification, could, of course, be determined only by a most careful investigation; and upon the outcome of this investigation the woman's life and freedom would depend. Of course the *mišpaṭ* assumes that the investigation finds the woman's contention correct and that she was entitled to her freedom.

Actually, however, Lev. 19.20–22 tells us something more than this, of particular significance for our investigation. It requires but a moment's thought to realize that these three verses fall into two distinct sections, v. 20, giving the statement of the case, and vv. 21–22 specifying the character of the sacrifice to be offered and the sacrificial procedure associated with it; this last is obviously of Priestly origin. But recognizing this, it becomes equally clear that v. 20 is actually complete in itself, and in itself constitutes a perfect *mišpaṭ*. Furthermore, this *mišpaṭ* is directly related to the *mišpaṭ* in Ex. 21.7–11, is in fact a logical corollary to it. It deals with this question: If the provisions of the latter *mišpaṭ* are not carried out, i. e. if freedom is not given to the concubine, although she was legally entitled thereto, but none the less she takes matters into her own hands and has intercourse with some man other than her master, what shall be done? The implication of the *mišpaṭ* is that her relations, or rather lack of sexual relations, with her master are after all a private matter between them, which he is little likely to advertise, and which therefore would not become known generally unless she chose to make public charge of neglect of marital duty against him before the judicial authorities and in this way secure the freedom to which she was entitled. But the *mišpaṭ* in Lev. 19.20 recognizes that she might naturally hesitate to take a step so drastic and so repugnant to a woman, and particularly so in the Orient, and might therefore prefer to satisfy herself with illicit relations with some man other than her master. Such a practice must have been not altogether uncommon, and would undoubtedly have called forth some legal provision, couched quite naturally in the form of a *mišpaṭ*, to deal with it. And just this *mišpaṭ* we find in Lev. 19.20. Apparently therefore Lev. 19.20–23 consists of an old *mišpaṭ*, recast slightly by Priestly editors to accord with their regular *mišpaṭ* formula, to which they have added the provisions for a sacrificial procedure as a means of expiation by the woman's paramour for his offense, altogether in the ritualistic spirit of the Priestly Code. And this old *mišpaṭ* in Lev. 19.20 must undoubtedly have stood originally in the ancient *mišpaṭ*-corpus which we have postulated, in very close proximity to the *mišpaṭ* in Ex. 21.7–11, to which it is so closely related, and in fact without which it is itself not fully comprehensible. Certainly too this *mišpaṭ* in Lev. 19.20 helps considerably to make clear the full meaning of the *mišpaṭ* in Ex. 21.7–11.[38]

---

[38] It must be admitted that Lev. 20.20b is an altogether unsatisfactory conclusion for this original *mišpaṭ*. In addition to the difficult and uncertain בקרת תהיה, the provision that the woman and her paramour should not be put to death, because the freedom to which she had been entitled had not been given her, is altogether negative and therefore does not satisfy. Certainly the *mišpaṭ* deals with a definite legal question which demands a positive and not a negative answer. It should be stated either that the woman was fully within her rights in bestowing her favors upon some man other than her husband-master, since she was legally entitled to her freedom, and that therefore no crime had actually been committed, or, if the law did really regard her act as a legal offence, even though of less gravity than actual adultery, it should have stated explicitly what the specific penalty should be. Perhaps the difficulty lies in the obscure בקרת תהיה. If we translate it, in accordance with our second and seemingly more probable suggestion, "there shall be an investigation," an investigation such as, as we have maintained, was actually necessary to establish the correctness of the woman's claim to freedom in this altogether private and secret matter, then we may understand that the words also imply something supplementary to "there shall be an investigation," viz. "and if the woman's contention be found justified, then no crime has been committed and no penalty shall be imposed and, in particular, they shall not be put to death" etc.

But for a number of reasons this interpretation is improbable, for (a), as we have seen, these *mišpaṭim* are, practically without exception, quite explicit in their statements both of the offense itself and also of the penalty provided; (b) if the interpretation just proposed were correct, we would expect to read at least ולא instead of merely לא before יומתו; (c) it is almost impossible to imagine that the *mišpaṭ* could have conceived of this illicit intercourse not as an offence demanding some penalty, or at least as presenting a definite legal problem necessitating a positive solution, since the related *mišpaṭim* in Deut. 22.13–29 apparently regard every sexual relation other than that between husband and wife, and impliedly also between master and concubine, as illicit and therefore necessitating some legal provision. Moreover, it is clear that the Priestly authors of vv. 21–22 also regarded the relations in question as sinful, and therefore necessitating a sin-offering on the part of the man; and this they would hardly have done if the original *mišpaṭ* had held that no legal offense had been committed.

In all likelihood therefore the original *mišpaṭ* provided a penalty of some kind; and furthermore, in all likelihood either בקרת תהיה is the late, Priestly substitute for this, or, more probably, particularly if we interpret בקרת תהיה as "there shall be an investigation," the statement of the penalty followed immediately after תהיה and before ולא יומתו. We can easily understand why, Within this *mišpaṭ*, in Ex. 21.7–11, v. 8b is extremely troublesome and difficult of explanation. It seems to say that, in case the slave-concubine became displeasing to her master, he had to let her be redeemed by her family, but he had not the authority over her that would permit him to sell her to a foreign people, and this because he had dealt treacherously with her. This is not at all what we would expect the *mišpaṭ* to say, if it said anything at all of this nature. The parallel to redemption by her family was certainly not the sale of her to a foreign people, but only to some other man or into some other family. Recognizing this, Jepsen[39] would translate לעם נכרי "into another family," without, however, offering the slightest evidence to justify his translation. Ibn Ezra felt this same difficulty, but correctly called attention to the fact that עם נכרי can mean naught but "foreign people," and that to express the naturally expected meaning we should read here (זר or) לאיש אחר or (זרה or) למשפחה אחרת. It is impossible to interpret לעם נכרי other than as "to a foreign people." But then why this thought, instead of that which would alone be natural here, viz. "to another man," or "to another family"?

Furthermore, בבגדו בה offers very great difficulty. Wherein did the master's treacherous dealing with the woman consist? Certainly not in that she became displeasing to him, for that was a perfectly natural and undoubtedly an all too common condition, which in itself could hardly be controlled, and which could therefore

---

in such case this was suppressed by the Priestly writers, who added vv. 21–22 to the original *mišpaṭ*, since their purpose was obviously to interpret the offense as of ritual rather than legal character, to shift the burden of it from the woman, or from the woman and the man together, to the man alone, and to provide a sin-offering and the accompanying rites of purification as both a punishment and a means of expiation. Apparently these Priestly writers ignored the woman in the case both because from their standpoint she was probably ritually negligible, and also because no doubt they regarded a woman who was free to dispose of her favors in this manner as a professional harlot, a class of woman which, we may judge from Proverbs, became quite numerous in the post-exilic period. Seemingly the full law in Lev. 19.20–23 reflects the point of view of an age much later than that of the original *mišpaṭ* in v. 20.

[39] *Op. cit.*, 28, note 2; so also Menes, *op. cit.*, 28 and note 1, following Holzinger.

in no wise be regarded as treachery toward the woman.[40] A possible solution of the problem may be found, however, in the altogether probable assumption that לעם נכרי לא ימשל למכרה is a late, marginal gloss, the comment of some late reader of the passage, which crept into the text in an unfortunate and disturbing place, and separated בבגדו בה from its first connection with והפדה. In such case the implication of the passage would be that, because of his growing dislike for the woman the master restricted, and perhaps in time even terminated completely, the performance of his full marital duty to her. Such conduct might well be regarded as treachery toward the woman, because of which the master must permit her to be redeemed by her family.[41] Moreover, the practical meaning of v. 8, thus interpreted, in conjunction with

---

[40] Note, for example, that Leah was by no means a wife altogether "pleasing in the eyes of her husband," and that in consequence Jacob's association with her is represented as having been infrequent (Gen. 30.15f.). Yet there is not the slightest implication there that Jacob had dealt treacherously with Leah. Moreover, the verb *bagad*, referring to the marriage relation, means "to betray, to be faithless," faithless in the sense of violating the covenant relationship between husband and wife, conceived of in ancient Israel as basic to marriage. Thus, in Jer. 3.20 the wife who is faithless to or betrays her husband is one who has another lover. Correspondingly, in Mal. 2.14f. the husband is faithless to his wife seemingly by disregarding the covenant between them and divorcing and sending her away, apparently without due cause. Now none of these implications of the verb *bagad* fits the condition described in Ex. 21.8a. Certainly for a man to have come in time to conceive a dislike for his slave-concubine was not a condition so abnormal or extreme as to be described by a term so strong as *bagad* obviously was; nor could the relationship between man and slave-concubine be conceived in any respect as a covenant relationship, to the betrayal of which the term *bagad* could imply. In all likelihood therefore בבגדו בה here is also a late gloss inserted by some one who no longer understood fully the implications of the law which he was attempting to interpret; cf. also note 43. However, although itself undoubtedly late, it is in all probability an older gloss than לעם נכרי לא ימשל למכרה, and its first connection was with והפדה.

[41] Among the present-day Bedouin a man must spend the night with each of his wives in her regular turn, or, if he does not care to do this, he must at least spend the night sleeping before her tent. Under no condition may he give preference in this respect to one wife over another; otherwise she has the right to claim a fine, a fixed amount, from him, while among the Terâbin the matter is even brought by the relatives of the wronged wife to the tribal chiefs for adjudication; cf. Musil, *Arabia Petraea*, III, 207; Jaussen, *Naplouse*, 95.

vv. 10f., with which v. 8 is obviously most directly related, would be this, that if the woman becomes displeasing in the eyes of her master to such a degree that he refuses to discharge his various duties to her, she becomes in theory subject to redemption by her family. But after all, these duties between husband and wife or master and concubine are for the most part secret matters, failure in the performance of which would not be known until the woman herself would bring definite charges before the proper authorities, presumably the village elders, that the man had failed to discharge his duty toward her.[42] This would necessitate an investigation by these authorities. Then, if the woman's charges were found true, the treatment accorded her by her master could well be regarded as *beged*, "treachery," which would entitle her to redemption by her family. But, of course, until the woman would bring the formal charge of neglect of marital duty, and the matter thus become known and established, her master could retain full right of possession over her, without the woman being entitled to the right of redemption by her family. And it might even be that, even if these charges were proved true and the woman became entitled to redemption, her family might not be able, or perhaps might not be willing to pay the redemption price. In such case, she would, of course, continue in her master's possession. But if, in addition to neglecting his marital duties to her, the master took another concubine alongside of her, and thus made her lot even more unhappy and unbearable, and attended by a certain inevitable amount of unfavorable publicity, then she became entitled to her freedom without even redemption by her family. Seemingly this is the full procedure which the *mišpaṭ* has in mind, but which is obscured by the insertion of the inexplicable לעם נכרי לא ימשל למכרה into its present place.[43]

---

[42] For an interesting and illuminating partial parallel in modern Bedouin practice cf. Kennett, *Bedouin Justice*, 102ff. There a first wife, aggrieved by the larger measure of favor extended by the husband to a younger and fairer second wife, manifested particularly by more frequent and richer gifts of apparel and finery to the latter, brought charges against her husband before a Bedouin court consisting of the sheikhs of the tribe. The case was settled amicably and to the first wife's complete satisfaction.

[43] Recognizing that in all likelihood לעם נכרי לא ימשל למכרה is a late gloss, we need hesitate no longer to translate it literally, "to a strange people he

If our analysis of these *mišpaṭim* be correct, then the continuation of the slave-group of *mišpaṭim* is to be found in vv. 20–21, 26–27, with, impliedly, vv. 12–19 and 22–25 disturbing passages, interrupting the original, immediate context, and therefore, of secondary character here. Actually, as a moment's thought will show, and as we have already intimated, vv. 20–21, 26–27 do

---

shall have no right to sell her." This would imply, of course, that the glossator probably did not understand the full import of the original *mišpaṭ*, or at least was thinking of the woman primarily in her capacity as a slave who might pass from one master to another, and only secondarily, if at all, in her capacity as her master's concubine, the real concern of the original *mišpaṭ*.

The correctness of this interpretation of this *mišpaṭ* is confirmed by realization of the fact that Deut. 21.14 deals with practically a parallel situation. It legislates for the case of a woman captured in warfare and taken as a wife by her Israelite captor, but who, after a time becomes distasteful to her husband. The passage provides that she must be regarded in every respect as a full wife, quite as if she had been an Israelite woman and had been acquired as a wife in the customary manner; her husband must therefore divorce her in accordance with the established procedure; under no condition might he sell her or himself use her as a slave (for this interpretation of התעמר cf. below, note 242), i. e. reduce her to the status of a slave-woman taken captive in war; this right is denied him just because he had had sexual relations with her, i. e. because she had actually played in relation to him the role of a wife.

Now this is exactly the same situation as that set forth in the *mišpaṭ* in Ex. 21.7–11, and particularly in v. 8. The only essential difference is that here it is actually an Israelite woman who is involved. True, she has been acquired as an *'amah*, a slave-concubine, whereas the woman in Deut. 21.10–14, though captured in war, had apparently been regarded as a full wife. Unquestionably too the law in Deut. 21.10–14 is somewhat, probably even considerably, younger than the *mišpaṭ* in Ex. 21.7–11 and may therefore depict a later and more refined stage of development of the basic principle of these two laws. But unquestionably the basic principle is the same for both, viz. that a woman, whether of Israelite birth or captured in war, who has been used by a man sexually, therefore practically as a wife and a potential mother of his children, may never again be treated by him as a slave woman, required to perform menial and degrading tasks or subject to sale by him. If an Israelite woman she has automatically the right, in case she becomes displeasing to her husband-master, of being redeemed by her own family, and this presumably at a price much lower than that originally paid for her by her master; and if a woman captured in war, with therefore no one to redeem her, she receives her complete freedom automatically through the medium of an ordinary divorce.

This parallelism between these two kindred laws is so obvious and convincing that it is difficult to avoid the conclusion that this must be the meaning of Ex. 21.7–8. This would confirm our hypothesis that לעם נכרי לא ימשל למכרה

constitute a single *mišpaṭ*, a unit in itself and a unit in thought with the two *mišpaṭim* which precede, in vv. 2–11; for vv. 20–21, 26–27 culminate in the statement of an additional manner in which a Hebrew slave might gain his freedom.

In its original, unified form, before vv. 26–27 became separated from vv. 20–21, this *mišpaṭ* must have stated this: If a man smites his male or female slave with a stick, of course in punishment of some fault or neglect of duty, as was impliedly the master's right, and the slave dies under his hand, i. e. as the immediate effect of the blow, then blood-revenge shall be exacted, of course by the family of the murdered slave.[44] But if the slave survives,

---

is a late gloss, inserted by some one who no longer understood the full import of the law. It may seem at first glance that these words represent an expansion of a simple statement which might have stood here originally, forbidding the sale of the woman under any condition or to any party. But in such case we would expect to find alongside of it the statement paralleling that in Deut. 21.14, that neither might he reduce her to the status of a full slave. And since no such provision is found here it seems best to regard לעם נכרי לא ימשל למכרה as a gloss.

But this confirms too the conclusion which we have already reached, that בבגדו בה, and with this of course all of v. 8b, is likewise a gloss. Actually, as we have seen, these words do not describe accurately the character of the relationship between the man and the woman, and the grounds for her right to redemption by her family. These were rather exactly those which Deut. 21.14 set forth, viz., that the woman had been used as a wife. In all this there was no ground for charging the man with having betrayed the woman. Moreover, these two words offer almost the only instance in C of the underlying motive of the legal decision of the *mišpaṭ* being explained. (The only other instance seems to be in v. 21bβ.) We shall see soon that this inclination to explain in considerable detail the underlying motive of a *mišpaṭ* is a marked characteristic of the Deuteronomic *mišpaṭim*, which distinguishes them most strikingly from the *mišpaṭim* of C. The fact therefore that such motivation of a *mišpaṭ* is quite characteristic of the later, Deuteronomic *mišpaṭim*, and largely the result of easily recognizable editorial processes in connection with them, while it is not at all characteristic of the *mišpaṭim* of C, tends likewise to confirm the conclusion that בבגדו בה is also a gloss, and that therefore the whole of v. 8b is a gloss. Certainly not only is the *mišpaṭ* complete in every way without the thought of v. 8b, but also with this half-verse omitted the *mišpaṭ* gives the impression of greater directness, conciseness and unity of thought, qualities decidedly characteristic of these *mišpaṭim* in C.

[44] This is further proof that עבד עברי in v. 2 means an Israelite slave; for a slave of foreign birth and nationality would have had no one near or in

if only for a day or two, and then, impliedly, dies, there shall be no blood revenge,[45] since he is his (the master's) property.[45a] But if a man strikes, impliedly with a stick and in the course of ordinary discipline, the eye of his male or female slave and destroys it, then he must send the slave away free in exchange for the eye; and if he knocks out the tooth of his male or female slave, he must send the slave away free in exchange for the tooth.[46] In other words, an injury resulting in the permanent loss of a part of the body entitles the slave to freedom. The unity of this *mišpaṭ* with and its inseparable relation to the two preceding *mišpaṭim* is unmistakable and its meaning is equally clear. Accordingly vv. 12–19 and 22–25 must be regarded as secondary legislation which for one reason or another have crept into their present positions and have broken up the original connection of vv. 26–27 with vv. 20–21 and of this entire *mišpaṭ* with the two *mišpaṭim* in vv. 2–11.

It is a matter of importance to determine how and why this intervening and disturbing matter crept in. This is not at all difficult. It is clear that the provision in vv. 20–21, that if a man

---

position to exact blood-revenge for him. Among the present-day Bedouin there is no blood-revenge for the killing of a slave, whether by his master or some other person; but among the Bedouin, of course, the slave is never a fellow-tribesman, and seldom even a fellow-Bedou; cf. Musil, *Arabia Petraea*, III, 360.

[45] The implication is, of course, that unless death followed immediately upon the blow, it might presumably have been due to other causes, for which the master was in no wise responsible; therefore there should be no blood-revenge.

[45a] V. 21bβ (כי כספו הוא) is in all likelihood a late, Deuteronomic, explanatory gloss; cf. below, note 263a.

[46] The fact that the value of a tooth is in no way commensurate with that of an eye seems not to have entered into consideration here. The sole determining factor seems to have been that the loss of either tooth or eye was permanent and irreplacable. It should be noted too that an eye or a tooth are the only parts of the body which could be knocked out and permanently separated from the body by a blow from a stick. Therefore the *mišpaṭ* found no occasion to specify other parts of the body, the destruction of which would entitle the slave to freedom. CHt §§14 and 16 deal with the case of the nose or ear of a slave being cut off, but in both cases the person inflicting the wound is not the slave's master, and seemingly the wound is inflicted, not by a blow from a stick, but by some cutting weapon, such as a knife or a sword.

kills his slave by a blow from a stick, blood-revenge shall be exacted, but if the slave survives for a day or two and then dies there shall be no blood-revenge, is not the primary thought of the *mišpaṭ*. The primary thought is found in vv. 26–27, viz. that if a man destroys his slave's eye or knocks out his slave's tooth, the slave is then entitled to his freedom. It is this consideration which makes this *mišpaṭ* a unit with the two *mišpaṭim* in vv. 2–11. But the question discussed in vv. 26–27 raises another closely related question, viz. what if the master kills the slave with the blow of the stick, with the implied further question, what protection has the Hebrew slave against too severe and cruel treatment at the hands of a passionate or brutal master? Vv. 20–21 give the answer to these questions, and therefore are obviously the introduction to vv. 26–27. It is clear too that the entire *mišpaṭ* implies that the master had a perfect right to chastise his Hebrew slave for any fault or neglect of duty, and to employ a stick for this purpose, and, provided he did not go too far and inflict a permanent injury upon the slave or deliver a blow which would cause immediate death, he was well within his legal rights and the slave had no redress.[47] The law protected the slave, however, against too extreme punishment by providing a very heavy penalty for the master, the manumission of the slave, in case of permanent injury, and blood-revenge in case of death.[48]

---

[47] Among the Bedouin today it is permitted to strike in punishment slaves or children with the fist or a stick, but it would be a great indignity, punishable by very high damages, to strike a free man in this manner; cf. Millard, *Egypt, Arabia Petraea and the Holy Land*, 175; Upton, *Gleanings from the Desert of Arabia*, 78.

[48] It is noteworthy that CHt §§2, 4, 7, 8, 12, 14, 16, 18 deal with the question of various injuries inflicted by A upon B's slave and the consequent penalties laid upon A. These consist in general of proportionate damages paid by A, not to B's slave, but to B himself. The underlying principle is, of course, that the value of B's property has been diminished by the injury to his slave, and so B must be compensated. But the *mišpaṭim* in C do not discuss these questions at all, but instead deal altogether with the totally different questions of injuries of various kinds, and possibly even death, inflicted by A upon his own Hebrew slave, and that not wantonly but only in the course of regular disciplinary punishment with a stick. This fact shows unmistakably that these

And one further implication this *mišpaṭ* carries with it, implied in its specification that the blow must be delivered by a stick in the master's hand. This is, as has been said, that the master had a right to chastise his Hebrew slave with a stick, that it was the weapon commonly used for this purpose. But the implication is further that if the slave dies from the blow, it could not be construed absolutely as a case of wilful murder, since the master would hardly kill his own slave deliberately. The death of the slave must have been contrary to the full purpose of the master and therefore largely an accident, or at the most only half intentional, the result of a sudden and unrestrained burst of passion on the part of the master. Of course, had the master struck the slave with some other object, a sword for example, it could have been construed only as premeditated murder. The import of the *mišpaṭ*, or rather of the first part of the *mišpaṭ*, in vv. 20–21, is clearly this, that even in case a master, through punishing his Hebrew slave too severely, kills him unintentionally and therefore accidentally, or at the most with only half intention, none the less there must be blood-revenge, exacted by the family or clan of the murdered slave. In this way the Hebrew slave was protected against too extreme and brutal punishment.

But clearly too this *mišpaṭ* in vv. 20–21 takes something for granted, viz. a statement of what the procedure was in case one free man killed another free man. Of course, in the original source from which this slave legislation was taken such a statement need not, and unquestionably did not stand between the two *mišpaṭim* in vv. 2–11 and this *mišpaṭ* in vv. 20–21, 26–27. It probably stood elsewhere in that law-corpus, and stated a principle which was fundamental in the law of the land, that in case free man A struck free man B and killed him, free man A should be put to death by the family, or perhaps in particular by the "avenger of the blood" of B. But after the little group of slave-*mišpaṭim* in vv. 2–11, 20–21, 26–27 had been lifted from their original source and incorporated into the Book of the Covenant, it was naturally felt in time that the provision in vv. 20–21 was

mišpaṭim in C have as their purpose the protection of the Hebrew slave against unduly violent punishment by his master.

incomplete and therefore not fully comprehensible without a statement preceding, setting forth the procedure in case free man A killed, not his slave, but another free man, B. And with such a statement inserted, and of course before vv. 20–21, and immediately before them, the full import of the legislation became this, that if A killed B, there should be blood-revenge; and even if B was A's slave, a Hebrew slave of course, and even if B was killed by his master's accidentally or half intentionally dealing him too severe a blow in the course of ordinary discipline, none the less there must be blood-revenge.

From this development of the full implications of the *mišpaṭ* in vv. 20–21, 26–27, it is clear that v. 12, or something for which v. 12 is a later substitute, must at one time have stood immediately before vv. 20–21. But it would seem strange indeed to find in this body of *mišpaṭim* this particular *mišpaṭ* preceded by the *ḥoq* which we now find in v. 12. We would rather expect another *mišpaṭ* here. This suggests that not improbably the *ḥoq* in v. 12 is a substitute for a *mišpaṭ* which stood here at first and expressed practically the same idea. This suspicion receives strong corroboration, amounting to practical confirmation, in the realization that the expression *mot yumat*, which we find not only in v. 12, but also in vv. 15–17; 22.18; Lev. 24.16, 17, 21 (LXX), and which seems to be characteristic of that type of law which we have styled *ḥoq*, is found otherwise in the Bible only in late passages, which come at the earliest only from the period preceding the Babylonian exile by very little, if at all, and the great majority of which come from the late exilic or post-exilic periods.[49] The presumption is therefore that v. 12 in its present literary form comes from this same relatively late period.

This presumption is confirmed by the determination of the exact meaning of *mot yumat*. It might be assumed that it implies the execution of the death penalty through the operation of the institution of blood-revenge. Actually this is the explicit interpretation of this phrase in Num. 35.16–21. But it can hardly be the implication of the phrase in Ex. 21.15 and 17, for the law would surely not have required that parents put their own son to death.[50] Impliedly here, and also in v. 16 as well as certainly in 22.18, *mot yumat* connotes execution by the state. This too is the explicit statement of Lev. 24.16, where death by stoning, with the entire community participating in the act, is prescribed.[51] Unquestionably therefore *mot yumat* in v. 12 implies execution by the state and not blood-revenge at all. But beyond doubt the *mišpaṭ* in vv. 20–21 implies another law preceding it, in all likelihood another *mišpaṭ*, providing for blood-revenge in case of murder, and not execution by the state.[52] The evidence is therefore cumu-

---

[49] The oldest passages in which the phrase occurs seem to be Gen. 26.11 (J2 [=Eisfeldt's L]) and Ex. 19.12b–13a (usually ascribed to J [by Eissfeldt to L], but probably a late gloss to v. 12a). Neither of these passages, however, can precede the exile by much, if at all. Deut. 13.6 and 17.6 are both certainly post-exilic (cf. below, pp. 128–132), as is also Jud. 21.5 (generally regarded by scholars as P or RP). Ezek. 18.13 is, of course, exilic at the very earliest. Otherwise the phrase occurs only in P.

---

[50] Cf. Deut. 21.18–21, where, although the charge is brought against the son by the parents, the execution of the death sentence is by the public.

[51] So also Ex. 19.12b–13a; Lev. 20.2; Num. 15.35f.

[52] Three main stages in the evolution of the practice of punishment for murder can be clearly distinguished in ancient Israel (cf. also Ring, *op. cit.*, 92, 107 and likewise in general Merz, *Die Blutrache bei den Israeliten* [Leipzig, 1916]). In the first of these, the primitive practice, brought no doubt by the migrating Israelite tribes from their original desert home, blood-revenge was inflicted by the clan of the murdered person upon the murderer, or even upon some other member or members of the murderer's clan (cf. Gen. 4.24). In the third stage the practice of blood-revenge, at least in its most literal and primitive form, has given way to execution by the state. Between these two there is, quite naturally, an intermediate stage, in which blood-revenge continues to be carried out by the clan of the murdered man, but now under the supervision of the state. The state determines where and when the conditions of the crime justify blood-revenge. The general principle is that blood-revenge is justifiable only when the murder has been premeditated or at least is clearly intentional. In such case the state delivers the murderer over to the avenger of the blood of the murdered man, going even to the extreme of forcibly taking the murderer away from the altar, or in a later stage of the institution, from the city of refuge, at or in which he may have sought asylum.

It is self-evident that this evolution was not a sudden, but a slow and gradual process. Apparently the definite beginnings of it may be assigned to the time of David, and in all likelihood to that very monarch himself. This seems to have been one of the social and legislative reforms which that powerful and far-seeing ruler inaugurated in his efforts to reorganize his empire and to promote the cultural progress of his people. (For certain important marriage reforms, the systematic beginnings of which must also be attributed to David, lative that a *mišpaṭ* once stood where v. 12 stands now, and immediately preceding vv. 20–21.

This conclusion finds still further confirmation in an analysis of vv. 13–14. For the original *mišpaṭ* form of these verses is un-

---

cf. my "*Beena* Marriage (Matriarchat) in Ancient Israel and Its Historical Implications," *ZAW*, 6 [new series] [1929,] 103f.) David himself took an elastic attitude toward the institution of blood-revenge, in accordance with the direction in which his own interests pointed. On the one hand, he could practice blood-revenge himself, or make a pretense thereof; as in the case of the Amalekite who claimed to have himself administered the death-blow to Saul when, crediting the first reports that Saul and all his sons had perished in the Battle of Mt. Gilboa, he came to bring what was presumably the to David good tidings and to receive in return the customary reward therefor; but instead, in order to win the favor and support of the northern tribes, David sought to pose as Saul's blood-avenger upon the self-claimed, actual slayer, and so immediately put the Amalekite to death (II Sam. 1.14). David likewise laid upon Solomon the charge to kill Joab, ostensibly for the slaying of Abner and Amasa, but no doubt equally for the slaying of Absalom and his frequent thwarting of David's plans (I Ki. 2.5f.). David likewise countenanced the Gibeonites in their purpose of blood-revenge against the family of Saul (II Sam. 21.1–6), though apparently somewhat against his will and as a matter of expediency. But on the other hand, when it met his purpose, David made peace with Abner, the slayer of his nephew Asahel, although, according to ancient standards, the duty of blood-revenge was quite as incumbent upon him, as the uncle of his sister's son, as upon Joab. Likewise in the case of the wise woman of Tekoa (II Sam. 14), with its application also to the case of the murder of Amnon by Absalom, he decided, in his capacity as king, and therefore as supreme judge, that where one brother slew another, contrary to what was unquestionably the former practice, blood-revenge should no longer be exacted.

Apparently the decision of David in this last case was of more than passing significance (so also Menes, *op. cit.*, 29). It seems to be, so far as the Biblical evidence indicates, the very first instance in which the state, as manifested in the person and authority of the king, intervened, in theory at least, in the primitive, automatic practice of blood-revenge by the clan of the murdered man, and determined when blood-revenge might and might not be practiced (agreeing with Michaelis against Merz, *op. cit.*, 89). From this beginning the authority of the state in all such matters must have expanded slowly but surely, until eventually it came to exercise complete supervision and decision in all cases of blood-revenge. And, as has been suggested, the general practice seems to have been that, in cases where blood-revenge was found justifiable and proper, the state handed the murderer over to the next of kin of the murdered man, the blood-avenger, for execution. This carried with it the implication, of course, that the state would not permit further blood-revenge mistakable, despite the evident, extensive, editorial revision which they have undergone; and it would be almost inconceivable that a *ḥoq*, such as we have in v. 12 at present, should have been continued and amplified or qualified by a *mišpaṭ*. And not only that, but it is beyond all doubt that vv. 13–14 assume the institution, not of state execution, but of blood-revenge, and are there-

---

by the clan of the murderer, now executed, in return for his death; in other words, the state not only determined in what cases blood-revenge might be exacted, but it likewise decreed, and of course enforced its decree, that the execution of the murderer by the blood-avenger must end the blood-feud and not in turn give rise to a new feud.

From this stage of the evolution of this institution it was, of course, but a comparatively short step to the next stage, where the state itself undertook the execution of the sentence of death for the murderer. Just when this final stage was reached completely, it is difficult to say. If the evidence were trustworthy, the judicial reforms which Jehosaphat is credited with having introduced may have marked a definite forward step in this direction (II Chron. 19.4ff. and in particular v. 10). But the necessity experienced by the Deuteronomic reformers of providing cities of refuge as places of asylum, in place of the local shrines, whose destruction they brought about, to which the manslayer might flee from the blood-avenger, and there find safety until his case could be duly investigated by the proper authorities, indicates conclusively that the institution of blood-revenge, even though under supervision, had not yet become altogether a state matter by the time of the Deuteronomic reformation. And if the Priestly legislation in Num. 35 was actually enforced, and was not merely theoretic, paper legislation, then it is clear that the institution of blood-revenge, with execution of the murdered person by the blood-avenger, even though under further restrictions and more rigid and responsible investigation by the proper authorities, persisted well into the post-exilic period.

These considerations will throw considerable light upon the conditions and social and legislative background of some of the laws of C with which we are dealing, and aid materially in the solution of a number of important and difficult problems. Certainly there can not be the least doubt as to the exact meaning of נקם ינקם in Ex. 21.20. נקם is clearly the technical term for "to exact blood-revenge" (cf. Deut. 32.43; II Ki. 9.7; Ps. 79.10). The word seems to be used either in the *Nif'al* or in the passive of the *Qal* (Gen. 4.15, 24; Ex. 21.21); therefore, in Ex. 21.20, נקם ינקם, "blood-revenge shall be exacted." Correspondingly *naqā* in the *Nif'al* has the technical meaning, "blood-revenge shall not be exacted" (cf. Joel 4.21). This may in fact even have been the original specific meaning of this verb. Accordingly *dam naqi*, a term probably current already in the early, pre-Davidic days of the institution of blood-revenge, usually translated "innocent blood," actually designated a person slain entirely without cause or justification and not in the fulfillment of the fore the amplification, not of the *ḥoq* in v. 12, providing for state execution, but of the *mišpaṭ* providing for blood-revenge, for which this *ḥoq* was substituted. Similarly the closely related legislation in Deut. 19.1–13, the source of which seems to have been an ancient *mišpaṭ*,[53] likewise deals with the institution of blood-revenge and knows nothing as yet of state execution.

---

duty of blood-revenge (cf. Deut. 19.10; 21.8; 27.25; I Sam. 19.5; Jer. 26.15). Similarly *naqi middam* means "absolved from responsibility for murder and from the penalty of blood-revenge therefor" (cf. II Sam. 3.28 and perhaps also 14.9).

But in the light of this technical terminology designating the various conditions and practices of the institution of blood-revenge in its earlier stages of evolution, there can be little questioning of the correctness of our contention that *mot yumat*, also obviously a technical term, implies execution by the state and not by the blood-avenger. This is confirmed by the realization that, practically with but one exception, *mut* in the *Hofʿal* invariably implies public execution by the state (cf. in particular Deut. 21.22). The one exception is found in Ex. 21.29. For the reasons for believing that this passage deals with a case of blood-revenge and not state-execution, see below, pp. 86–92. But it should be borne in mind that Ex. 21.29 is apparently a *mišpaṭ* of considerable antiquity, framed probably at a time when state-execution had not yet become the rule, and therefore *mut* in the *Hofʿal* had not yet acquired its later technical connotation. And on the other hand, it is difficult to conceive of any convenient term other than *yumat* which might have been used here. It should be noted too that only *yumat* is used, and not the seemingly formal and technical *mot yumat.*

Consequently our contention seems well established that *mot yumat* technically implies execution only by the state and not at all by the avenger of the blood, and that therefore, when used to designate the punishment for wilful murder, as in Ex. 21.12, it implies that the old institution of blood-revenge, even in its second stage of evolution, has been outgrown, and that in cases of murder or manslaughter the determination of the guilt, degree of responsibility and corresponding character of the crime, the fixing of the penalty and its actual execution are all matters of the state alone. It follows therefore that all these laws in which *mot yumat* is used in this technical sense must reflect this final stage in the evolution of the institution of blood-revenge and must be the product of comparatively late legislative and literary activity. This in turn establishes quite conclusively that all the *ḥuqqim* in Ex. 21.12–17 in which the expression *mot yumat* is used regularly, imply execution by the state for the crime in question, and are all comparatively late insertions into the body of *mišpaṭim* of C, and that in particular the present *ḥoq* in v. 12 is a late substitute for the *mišpaṭ* which originally stood here.

[53] Cf. the characteristic *mišpaṭ* form of vv. 11–13 and below, pp. 204–207.

In fact Deut. 19.1–13 enables us to determine with great probability approximately what the original form and wording of Ex. 21.13–14 must have been before undergoing editorial revision. It is generally agreed that the cities of refuge, of which we read for the first time in Deut. 19.1–13, are an institution called into being by the Deuteronomic Reformation.[53a] Such places of refuge were necessitated by the destruction of the local shrines in the Deuteronomic program of the centralization of worship in the Temple at Jerusalem. Before this the altar of every local shrine, at least of every considerable local shrine, must have offered asylum to the blood-shedder and to him whose life was endangered for any reason whatsoever. I Ki. 2.28 is, of course, the classic instance of this.[54] Therefore, since undoubtedly Ex. 21.13–14, at least in its original form, is pre-Deuteronomic, it follows that it must have stated practically this, that in case of unpremeditated, accidental manslaughter, the slayer should have the right to flee to some altar, if he could succeed in getting there before the blood-avenger overtook and killed him, and that he should have the right of asylum there until the matter could be properly investigated and it be established that it was actually a case of unpremeditated manslaughter, and not wilful murder, and presumably too until the relatives of the slayer could effect an amicable and satisfactory settlement with those of the slain man.

In the present wording of vv. 13–14 the use of the first person in ושמתי and מזבחי is noteworthy. We shall see in due time that this is a characteristic manifestation of a late, Deuteronomic, editorial hand. Furthermore, the significant use of the singular מקום in v. 13, obviously in the sense of "a sanctuary,"[55] and of the singular מזבחי in v. 14, with its implied reference to the single, central sanctuary, is further evidence of Deuteronomic re-casting and reinterpretation of the original wording of this *mišpaṭ*. And finally the use of the second person in לך and תקחנו is, as we have seen above,[56] further indication of an editorial hand.

[53a] Cf. the most recent treatment of this subject, Nicolsky, "Das Asylrecht in Israel," *ZAW*, 7 (new series) (1930), 146–175.

[54] For the institution of asylum at sacred shrines among the present-day Bedouin, and likewise for a growing tendency to disregard the sanctity of these shrines and the right of asylum there, paralleling exactly the picture of like conditions and developments in ancient Israel, which I Ki. 2.28 pictures, cf. Musil. *Arabia Petraea*, III, 344.

[55] Also Ex. 20.24b; so also Nicolsky, *op. cit.*, 148.

It is clear that this *mišpaṭ* in its original form must have constituted a modification of the general *mišpaṭ* for which the *ḥoq* in v. 12 is the later substitute, and that this subordinate *mišpaṭ* must have been related to the general statement of principle in quite the same manner as the modifications in vv. 3–6 are related to the general principle in v. 2, or as vv. 8–11 are related to v. 7. The entire *mišpaṭ* may well have read somewhat thus, כי יכה איש את רעהו ומת נקם ינקם: ואם לא צדה והאלהים[57] אנה לידו ונס אל מזבח . . .: ואם יזד איש על רעהו להרגו בערמה מעם המזבח יקחנו למות:

But it is certain that the provision for asylum at a sanctuary, in the second part of this *mišpaṭ*, represents a modification of the original absolute and invariable practice of blood-revenge, a modification which could have developed only after the tribes of Israel had established themselves firmly in Palestine and had absorbed much of its culture. I Ki. 2.28 shows that already at a comparatively early date the altar had come to be regarded as a regular place of asylum. But it does not follow necessarily from this that already at that time it had come to be regarded as the regular and legalized place of refuge for one guilty of unintentional manslaughter. Unquestionably blood-revenge was originally exacted in every case of violent death, regardless of whether it was deliberate murder or accidental, unpremeditated manslaughter. This seems to be the practice recorded in v. 20, and this was in all likelihood the implication of the basic statement of the original *mišpaṭ*, for which the *ḥoq* in v. 12 is the substitute. At any rate the provision in v. 20 that if a man kills his servant by striking him with a stick, even though, as we have seen, this was obviously not a premeditated murder in the strict sense (for in that case there would have been no need to specify the instrument of death) there must nevertheless be blood-revenge, seems to ignore the possibility that the master might have the right of asylum at a sanctuary. Apparently it knows naught of the provision in vv. 13–14, presumably because this amelioration of the old, unvarying application of the principle of blood-revenge had not yet evolved at the time the *mišpaṭ* in vv. 20–21 was framed.[58] Presumably therefore vv. 13–14 were inserted here even later than was the *mišpaṭ* antecedent of the present v. 12, and vv. 20–21 followed originally immediately upon this *mišpaṭ*. This conclusion is confirmed by the phrasing of v. 20, כי יכה איש את . . . . . ומת . . . . . נקום ינקם, so closely related to what must have been the original wording of the *mišpaṭ* antecedent to the present v. 12. In fact the wording of v. 20 becomes doubly significant if we understand that this connection must have originally been immediate and not interrupted by the intervention of vv. 13–14.

---

[56] P. 38.

[57] האלהים not necessarily "the Deity," but probably "a supernatural power," even an evil spirit; cf. I Sam. 18.10f. Perhaps the article here is also the result of Deuteronomic editing, and the original read simply אלהים. The insertion of the article here would then parallel the unquestionably similar Deuteronomic revision which changed the original מקום of 20.24b to המקום.

Of course, if we recognize v. 12 in its present form as a *ḥoq*, as a relatively late substitute for the *mišpaṭ*, which must have stood here originally, it follows unmistakably that the other *ḥuqqim* in vv. 15–17, which are obviously represented as special cases of the general principle in v. 12, and in which execution by the state is likewise prescribed, must also be at least as late as, if not even later than v. 12 in its present form, and therefore also the result of late, editorial revision.

But if our inference be correct that originally the *mišpaṭ* in vv. 20–21, 26–27 followed immediately upon the two kindred *mišpaṭim* in vv. 2–11, that then another *mišpaṭ*, drawn from some old corpus of *mišpaṭim*, for which still later the *ḥoq* in v. 12 was substituted, was inserted between the *mišpaṭim* in vv. 2–11 and the *mišpaṭ* in vv. 20–21, 26–27, and that still later, though before the substitution of the *ḥoq* in v. 12 for the original *mišpaṭ* there, the *mišpaṭ* in vv. 13–14 was appended to the *mišpaṭ* which stood originally in v. 12, it follows likewise that the *mišpaṭ* in vv. 18–19 is also secondary. The full meaning of this *mišpaṭ* too becomes clear only upon careful and detailed consideration of the wording. It does not say simply: If A strikes B, but B does not die, etc. It specifies: If A and B[59] quarrel, and (in the course of the quarrel) A strikes B with a stone or with his fist, but B does not die, etc. It is clear that this *mišpaṭ* is dealing with an obvious case of unpremeditated injury. The statement that A and B are quarreling implies that the dispute had come up suddenly and therefore had been premeditated by neither party.[60] Moreover, the quarrel is between two free men, and is not a case of a master disciplining his slave, as in vv. 20–21. Furthermore, in such a quarrel it would be altogether natural for one of the parties in a fit of passion to strike the other with his fist, or even with a stone which he might quickly pick up; for stones, particularly in Palestine, are everywhere ready to hand. A blow delivered in this manner and under these conditions could certainly not be regarded as premeditated. Had the blow been delivered by a sword, or even by a stick, which one of the parties carried in his hand, it could not be regarded as unpremeditated, for of course one did not go about ordinarily with a sword, nor even for that matter with a stick. The mere fact that a blow was delivered by a sword or a stick, to a free man of course, would imply immediately that it was premeditated; whereas, if delivered by a man's fist or a stone quickly picked up, it must be regarded as unpremeditated and delivered only in the heat of sudden and unforeseen passion. This is unquestionably the implication of the two specific provisions, "If (two) men quarrel" and "with a stone or with a fist" in this *mišpaṭ*.

---

[58] Unless perhaps it means to imply that in this particular case of unpremeditated, or, at the most, half intentional, manslaughter, the right of asylum does not apply, that, in other words, an exception to the general principle of asylum is made in order to provide the Hebrew slave the maximum of protection against his master. But had this been the purpose, would not this *mišpaṭ* have stated so explicitly instead of leaving it to be inferred?

It is clear from this that this *mišpaṭ* merely continues the thought of the secondary *mišpaṭ* in vv. 13–14. Both deal with the same condition, viz. unpremeditated strife between two free men. The first *mišpaṭ* in vv. 13–14 deals with the procedure in case death results from this unpremeditated strife, while the second *mišpaṭ* in vv. 18–19 deals with the procedure in case only a temporary injury results therefrom.[61] The relationship of these two *mišpaṭim* is so close and self-evident that it is difficult to avoid the conclusion that they must have come from a common source, in some old corpus of *mišpaṭim*, in which they stood in close contiguity to each other, and must have been extracted from there and inserted here by the same editors. But in such case it would again follow with certainty that the insertion of the *ḥuqqim* in vv. 15–17 between these *mišpaṭim* took place only after these latter had themselves been inserted here in C, and represent the work of comparatively late editors.[62]

---

[59] LXX and Peš. read שני before אנשים.

[60] Jepsen's interpretation (*op. cit.*, 33) of וכי יריבון אנשים, "If men come into conflict before the court," i. e. enter into dispute about a legal matter, is self-evidently far-fetched and impossible. For ריב in the sense of "to quarrel, to fight," cf. Deut. 33.7; Jud. 11.25; 21.22.

In this way and by these successive and easily comprehensible steps,[63] the *mišpaṭ* in vv. 20–21, 26–27 must have come to be separated from its original immediate connection with the related *mišpaṭim* in vv. 2–11, and the intervening more or less closely related matter must have crept in.

---

[61] In this connection we would expect to find still another *mišpaṭ* dealing with the procedure in case permanent injury results from this unpremeditated blow. That there was actually such a *mišpaṭ* and that it provided that in case of permanent injury damages should be paid by the responsible party, may be inferred from the use of ונקה in v. 19 and from the statement in the same verse that in case of no permanent injury A must pay B only for the period during which he is confined to his home and must also take care of the physician's charges. Unquestionably in the ancient corpus in which these *mišpaṭim* stood originally just such a *mišpaṭ* as this must have preceded immediately the *mišpaṭ* here recorded in vv. 19–20.

[62] Not impossibly the *mišpaṭ* referred to in the preceding note, and which in the original, ancient corpus of *mišpaṭim* must have stood between the *mišpaṭ* here in vv. 13–14 and that in vv. 18–19, was transferred to C along with the two related *mišpaṭim* which immediately preceded and followed it. In such case the three *ḥuqqim* in vv. 15–17 probably supplanted it and caused its suppression and disappearance from this passage.

[63] To sum up, these stages seem to have been as follows; (1) originally the slave-*mišpaṭ* in vv. 20–21, 26–27 followed immediately upon the two slave-*mišpaṭim* in vv. 2–11. But the question treated in vv. 20–21, viz. as to the procedure in case a slave is killed by a blow from his master's stick, raised the question, what should the procedure be in case one free man kills another. This led to the second stage in the evolution of this passage, viz. (2) the insertion immediately before vv. 20–21 of the *mišpaṭ* which stood originally where v. 12 stands now, and which provided for blood-revenge in case of murder. But this in turn brought with it, though whether immediately or subsequently it is difficult to determine, (3) the *mišpaṭ* which we now find, in a form considerably modified by Deuteronomic editors, in vv. 13–14, and which provided

But if our contention be correct, that vv. 26–27 constitute a unit with vv. 20–21, that all four verses together form one single *mišpaṭ*, then it follows, of course, that vv. 22–25 too are an insertion, a secondary *mišpaṭ*, which, for one reason or another, has crept into its present position, and has broken up the original *mišpaṭ*, vv. 20–21, 26–27, into two sections, rather far removed from each other, and each now having the appearance of a separate and independent *mišpaṭ*.[64] Certainly the connection of the *mišpaṭ* in vv. 22–25 with the legislation which immediately precedes or follows is loose indeed, in fact almost impossible to perceive. This *mišpaṭ* seems to say this: If men[65] are brawling[66] and a

---

the limitations placed, in case of unpremeditated manslaughter, upon unrestricted blood-revenge. But this in turn raised another question, a question which was probably suggested also by the matters discussed in vv. 26–27, what should the procedure be in case free man A strikes free man B but, instead of killing, merely wounds him. This led to the next stage, (4) the insertion between the original *mišpaṭ* in vv. 13–14 and that in vv. 20–21 of two additional *mišpaṭim*, the first dealing with the procedure in case the blow caused a permanent injury, and the second dealing with the procedure in case the blow caused only temporary incapacitation, but no permanent injury (vv. 18–19). Still later, and under the influence of the developing practice of regarding all crimes, including murder and manslaughter, as offences against the state or against society in general, rather than against the family or the clan, and therefore of having the state not only regulate but also execute the punishment of death in case of murder, (5) the original *mišpaṭ* in v. 12 was supplanted by the present *ḥoq*, while, still later, (6) other dependent *ḥuqqim*, creeping in almost immediately after the *ḥoq* now in v. 12, brought about the suppression and eventual disappearance of the secondary *mišpaṭ*, which preceded the one in vv. 18–19 and provided the procedure in case of permanent injury resulting from the blow dealt by free man A to free man B.

[64] And with the resultant editorial change of the undoubtedly original ואם in v. 26 to וכי to comply with the regular *mišpaṭ* form.

[65] Here too, just as in v. 18, LXX and Peš. read שני after אנשים. The situation seems to imply a fight between only two men, and not a general brawl with many participants.

[66] The difference between ינצו here and יריבן in v. 18 seems to be this: in v. 18 יריבן seems to imply a quarrel or dispute, which is mainly, if not entirely vocal (cf. Gen. 26.20–22; 31.36; Ex. 17.2; Num. 20.3; Jud. 8.1) but the climax of which is that one of the disputants in the heat of passion, suddenly and

pregnant woman (standing by, of course) is struck[67] so that her foetus comes out,[68] but there is no permanent injury, a fine shall be paid, whatever the husband of the woman may impose upon him,[69] and he must pay it under the supervision of umpires.[70]

---

entirely without premeditation, strikes his opponent with his fist or with a stone which he has just picked up. On the other hand, ינצו in v. 22 implies a more violent quarrel, in which blows are struck back and forth (therefore the *Nif'al*; cf. Ex. 2.13; Lev. 24.10; Deut. 25.11; II Sam. 14.6). In such a struggle, with frequent blows no doubt delivered at random, a bystander might easily be struck.

[67] ונגפו, used impersonally.

[68] Reading ויצא ולדה with Sam., LXX; cf. ולד in Gen. 11.30; II Sam. 6.31 (Jepsen, *op. cit.*, 35, note 2). Perhaps it would suffice to emend only to ולדיה on the assumption, which legal writing might well consider, that the woman might have been carrying twins.

[69] I. e. upon the person who struck the woman.

[70] The word בפללים seems to have troubled scholars for many years, due chiefly to the fact that the usual translation, "judges," has been misleading, and that as a result the entire procedure has not been clear. In consequence, the purely conjectural emendation, בנפלים, "for the foetus," which Budde proposed (*ZAW*, 11 [1891], 107), has found quite general acceptance, particularly by Holzinger, Baentsch and Ring (*op. cit.*, 98, note 1). It is tempting indeed to follow the lead of a scholar as eminent and reliable as Budde, and particularly where the emendation is so simple, and on the surface so apposite. But careful consideration warns against the emendation. In the first place were בנפלים the original reading, it would not be easy to account for the plural, unless perhaps, as these scholars have done, to correlate it with the plural ילדיה (or ולדיה). Furthermore with this reading, the last two words of the sentence would not add anything to the thought, but would be tautological and altogether superfluous; and this would be surprising indeed in legalistic writing such as these *mišpaṭim* are, in which, as we have had repeated evidence, every word seems to have its explicit purpose and to be altogether indispensable. Jepsen (*op. cit.*, 35, note 5) would reject Budde's emendation, though for no reason other than that it seems to have no basis either in MT or in any of the versions. He would instead read כפללים, and interpret this as "according to the decision" (i. e. of the husband, of the amount of money which the offending person must pay). He would regard פללים as a plural, not of פליל but of פלילי, which he translates "(judicial) decision." But on the one hand, פלילי, an obscure word indeed, is hardly a noun, but only an adjective, and therefore can not have the meaning which Jepsen would ascribe to it. And on the other hand, even if it had this meaning, then why the plural; and would we not then expect a reading כַּפללים האלה? And finally, were this the correct reading and this also the meaning, then what would it add to the

But if there is permanent injury then thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, bruise for bruise.

It requires but a moment's consideration to realize that there is something altogether incongruous in the *mišpaṭ* as it reads at present. In the first place, the sudden introduction of the second person in ונתתה in v. 23, quite unusual and irregular in these

thought of the verse; for the mere statement that he shall be fined in whatever amount the husband may lay upon him, carries with it the necessary implication that of course he must pay accordingly; therefore why add these words?

The whole failure to appreciate the correctness of MT and to understand the words properly is due, I believe, to a wrong approach. Scholars have assumed naturally and tacitly the constant supervision and enforcement of these laws by an established court presided over by a judge, or even by judges. Accordingly they have taken it for granted unquestioningly that פללים must be a synonym of שפטים. And they have argued correctly that, on the one hand, with פללים meaning "judges," the ב would be exceedingly difficult of explanation, and on the other hand, what would be the function of the judges, since the amount of fine has already been fixed by the woman's husband? They were confirmed in their argument by the seeming close relationship of many of these *mišpaṭim* to the laws of CH, CA and CHt, all of which presuppose the existence of established courts, presided over by judges.

They have failed to realize that many of these *mišpaṭim* bear a marked resemblance and an undoubted relationship to principles and practices of justice among the Bedouin as observed still today, and find a readier explanation by comparison with Bedouin judicial procedure than with ancient Babylonian, Assyrian or Hittite. Such is the case here. It goes without saying, of course, that this law never contemplated that the husband could demand of the offending party any sum of money or any other compensation that he might desire, for then there could well be no limit to what he might claim. Some method of regulation of the demand of the husband, so that it might be kept within reasonable limits, was absolutely indispensable; and just this must have been provided for in the last two words of the sentence. Now among the Bedouin, in cases of litigation such as this, where a fine or damages must be paid by one party to another, this amount may be fixed by the sheikh, or in extreme cases by the *qaḍy*. But not infrequently each party chooses an umpire to represent him. Through the mutual discussion of these umpires, and by a process of bargaining or of give and take, the matter is eventually settled and the size of the fine fixed (cf. Burckhardt, *Notes on the Bedouins and Wahábys*, 68; Jaussen, *Coutumes des Arabes au pays de Moab*, 206, 233f.; *Naplouse*, 144; Kennett, *Bedouin Justice*, 68f.). In particular a most illuminating account of the settlement of a case at Mecca in just this manner, by *mišpaṭim*,[71] is noteworthy, and probably indicates the hand of an editor; and in the second place, and of far greater significance, is the fact that vv. 23b-25 deal with an issue which is not implied at all in the situation with which vv. 22–23a, the *mišpaṭ* proper, deal. These verses raise the question of the procedure in case of an injury resulting to a pregnant woman, an innocent bystander, struck in a brawl between two men which she was watching, with the result that an abortion is brought about. V. 22 deals with the question of procedure in case the loss of the foetus be the only damage sustained, but no permanent injury ensue, to the woman of course. The issue in v. 23a is no longer the loss of the foetus, but apparently the procedure in case permanent injury does befall the woman. Furthermore, it is not a question, apparently, of any kind of an injury which might befall any bystander, or even any woman bystander, but only a pregnant woman, an injury which is entirely the result of a woman in her condition being struck an accidental blow, which might result in an abortion and other evil effects ensuing therefrom. The case is highly specialized. It is clear therefore that with this problem injuries to eyes, teeth, hands or feet, or burns, and for that matter even other external wounds, in other words the kind of injuries described in vv. 24–25, can have no connection whatever. Vv. 24–25 are altogether unrelated to vv. 22–23a, and their presence here merely beclouds the real question with which the *mišpaṭ* proper deals. V. 23b likewise does not apply to the case in question. Unquestionably vv. 23b–25 are secondary here, and a substitute for

---

reference to the judgment and good offices of three umpires, in preference to submitting it to an official court and judge, is given, with rich detail as to the various steps in the procedure, in Rutter, *The Holy Cities of Arabia*, II, 107–112. Just such a procedure seems contemplated here. Each party to this dispute selects an umpire to represent him. The husband demands a certain sum. This constitutes the starting-point of the negotiations. From this point the umpires proceed to treat with each litigant back and forth until finally an agreement is reached as to what amount the offender shall actually pay. Understanding that some such procedure as this must have been contemplated by the law, the text presents no difficulty whatever, and בפללים must be translated simply and literally, "he shall pay through (i. e. under the supervision or through the negotiations of) umpires" (so also Merz, *op. cit.*, 100, note 3).

[71] Cf. above, p. 38.

something quite different which constituted the conclusion of the *mišpaṭ* begun in vv. 22–23a.[72] But if so, then how did they

---

[72] Budde has recognized this fact, and has therefore suggested that vv. 23–25 are out of place here, and stood originally immediately after vv. 18–19 and were the logical continuation of the *mišpaṭ* there (*ZAW*, 11 [1891], 111). In this he has been followed by Baentsch, Jepsen (*op. cit.*, 32), Ring (*op. cit.*, 97), and also apparently, though rather half-heartedly, by Holzinger (*Commentar*; but with more assurance later, in Kautzsch, *Die heilige Schrift des* A. T.^{4}). Again the suggestion is at first glance most attractive. But this suggestion too must be rejected. In the first place, as we have seen, the *mišpaṭ* in vv. 18–19 unquestionably deals with the question as to the procedure in the case of two men quarreling and, entirely without premeditation, one striking the other with his fist or with a stone, picked up on the spur of the moment, and dealing him an injury which has, however, no permanent ill effects. We have seen that the thought is incomplete without consideration of the question as to the procedure in case some permanent injury resulted, and that this must have been treated fully in a *mišpaṭ* which must have preceded, and not followed, vv. 18–19, and which has been supplanted by the present vv. 15–17. Certainly vv. 23–25 would not supply the missing thought, and their possible close relationship to the thought of vv. 18–19 is more seeming than real. For, on the one hand, with a blow from a fist or a stone, delivered without premeditation, in the heat of passion incidental to a quarrel, it is true that an eye or tooth might be permanently destroyed or a hand or foot permanently maimed, or a wound or bruise might result; but certainly the effect could never be a burn, as v. 25 contemplates. Moreover, while the injuries to eye, tooth, hand or foot, dealt with in v. 24, might be of permanent character, and result in the inability of the wounded person to ever use these organs again, certainly the injuries listed in v. 25 are neither permanent nor incapacitating; they would be therefore the very kind of injuries for which an altogether different and contradictory provision would have been made in vv. 18b–19.

Furthermore, if the blow were to result in the death of the person struck, the procedure would not be at all that of life for life, as v. 23b states expressly, but, since this would be unquestionably a case of unpremeditated manslaughter, the principle of "life for life" would not apply, and the slayer would not be summarily put to death, but would have the right to flee for refuge to the altar until the matter could be investigated and it be established that this was a case of unpremeditated manslaughter, and the affair be then settled in whatever manner was customary. Of course it might be assumed that v. 23b presupposes a practice antecedent to the insertion of vv. 13–14, providing for the altar as a place of refuge in case of unpremeditated manslaughter. But, on the one hand, the institution of the altar as a place of refuge is unquestionably older than the formulation of the principle in legal terms and the incorporation of vv. 13–14 into C; and on the other hand, even granting the above assumption, then the condition which v. 23b would contemplate was come here; and still further, how did the entire *mišpaṭ*, vv. 22–25, whose connection with what immediately precedes or follows is not at all clear, and which is manifestly a disturbing element in this particular position, come to be attracted to just this place? The question is of great importance, both in itself and in its far-reaching implications.

This question opens up for reconsideration the oft-discussed question of the origin and significance of the *lex talionis* in ancient Israel. The principle underlying this law is stated three times in the Pentateuch, here, in Lev. 24.17–20 and in Deut. 19.16–21.

---

dealt with already in v. 12, or rather in the original *mišpaṭ* for which v. 12 is, as we have seen, the later substitute; and in such case v. 23b would be quite superfluous.

Furthermore, v. 23a presupposes the three words which we find at the end of v. 22a. Nor can we rid ourselves of these three words in v. 22a by Budde's hypothesis that they are editorial here, attracted by the opening words of v. 23a after it had been removed to this place by the editors of C. For even if these words were not original in v. 22a, the very question with which v. 22 deals necessitates consideration of the two subordinate conditions, (a) what if there be no permanent injury other than the loss of the foetus, and (b) what, on the other hand, if there be permanent injury to the woman; in other words, the distinction which ולא יהיה אסון in v. 22a and ואם אסון יהיה in v. 23a make is quite essential and indispensable to the question discussed in the *mišpaṭ*, and therefore these words are altogether in place here and necessary to the thought.

But it is clear too that, since the striking of the pregnant woman in the manner described in this *mišpaṭ* was self-evidently unpremeditated, so that if the woman died in consequence it could be interpreted only as a case of manslaughter and not of deliberate murder, the penalty, life for life, prescribed in v. 23b, fits this case not one whit better than it would apply were v. 23 the continuation of vv. 18–19, as Budde has proposed.

Moreover, were vv. 23–25 actually the original continuation of vv. 18–19, then how account for their transposition to their present place?

It is clear therefore, as we have shown, that vv. 23b–25 can not be the continuation of the thought with which vv. 22–23a deal. Something quite different must have stood here originally, and have dealt with the question of the procedure in case permanent injury, or perhaps even the death of the woman resulted from the unpremeditated blow. Just what this may have been it is difficult to imagine, unless in all likelihood it prescribed a manner of assessing for such a case a fine proportionately larger than that contemplated for the condition dealt with in v. 22 (so also Jepsen, *op. cit.*, 61f.). But that vv. 23b–25 are a substitution for something quite different which stood here originally is beyond all question.

It is usually assumed that, because the statement here is found in the Book of the Covenant, and this is generally recognized as being considerably older than either Deuteronomy or the Priestly Code, to which the passage in Lev. 24 belongs, therefore this statement here is not only the fullest, but likewise the oldest version of the *lex talionis* in the Bible. But if vv. 23b–25 here are recognized as secondary, and not as an integral part of C, then this conclusion does not follow at all, and the entire question of the meaning of the *lex talionis* and its role in the legislation of ancient Israel must be considered anew.

In the first place, it must be realized that in only one of the three passages does the application of the *lex talionis* seem to be fairly simple, direct and logical, viz. in Deut. 19.16–21. This becomes all the more apparent when we realize that vv. 19b–21a are secondary, interrupt the direct development of the main theme, and introduce an entirely new thought, viz. the urgent necessity of purging all defiling evil, both ritual and moral, from the midst of a consecrated people, among whom Yahwe is dwelling, but whose continued residence there would be jeopardized were this defiling evil not removed.[73] With these verses omitted we see not only that v. 21b follows logically and smoothly upon 19a, but also that in vv. 16–19a, 21b we have a perfect type of *mišpaṭ*.[74] It says: If a false witness[75] arises against a man to testify falsely[76] against him, and the two men who have the litigation take their stand before the judges[77] who shall be in those days, and the judges investigate carefully, and it developes that the witness is a false witness, falsely has he testified against his brother, then ye shall do to him just as he intended to do to his brother, life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

---

[73] This is the implication of the phrase constantly recurring in Deuteronomy, ובערת הרע מקרבך (מישראל). This phrase, with its many significant implications, and also with its underlying thought that Yahwe is dwelling in the midst of the people and the land, in the Temple at Jerusalem, and that His presence there is the definite assurance to the people of His protection and favor, reflects, of course, the point of view of the post-exilic period. Yahwe's presence in the Temple and in the midst of the land and the people, necessitated, self-evidently, that the Temple, and also the land and the people, must be kept pure, not only ritually, but also morally and spiritually; otherwise He might depart from their midst, and thus they would forfeit their guarantee of divine protection and favor; or He might, because of the obvious violation of His holiness, even deliver them into the hands of an enemy. Therefore not only the rites of purification of priesthood and sanctuary on the Day of Atonement, as these developed in time, and likewise all the detailed ceremonies of ritual purification recorded in the Priestly Code, but also many other ceremonies of a related character, such as those recorded in Deut. 21.1–9; 22f.; 23.10–15. Very frequently in Deuteronomy these passages are characterized by the charge, ובערת הרע מקרבך (cf. below pp. 138–147). In almost every passage careful analysis shows clearly, as we shall see in time, that this phrase is secondary and editorial, and establishes beyond question that many of the

Interpreted in this manner this passage seems perfectly comprehensible; yet more detailed consideration of it will throw additional light upon our main question. Actually it is only the נפש בנפש, "life for life" principle of the *lex talionis* which here applies directly to the question discussed in the *mišpaṭ* proper; the implication being that if the false witness had intended that through his false testimony the defendant's life should be forfeited, so that he should have been put to death for a crime of which he was innocent, then the false witness shall be put to death. The application of the remainder of the *lex talionis* to the question in hand would imply not only that under certain

---

passages in which this expression occurs, record old, pre-Deuteronomic *mišpaṭim*, which have been extracted from their original source or sources, probably some ancient corpus of *mišpaṭim*, because they deal with a matter which had come, in the post-exilic period, to be regarded not only as a legal offense, but also as a defiling sin, utterly displeasing unto Yahwe, the performance of which in Israel might endanger His continued residence in the midst of the people. Therefore the law was taken from its original source, and, with a certain amount of editing and the customary addition or insertion of the characteristic phrase, ובערת הרע מקרבך, or the almost synonymous כי תועבה הוא, or כי תועבת יהוה כל עשה אלה, or some other parallel expression, was incorporated into the Deuteronomic Code by some post-exilic Deuteronomic editor. Numerous and convincing illustrations of this conclusion will be presented in our analysis of the Deuteronomic *mišpaṭim* later in this work.

[74] The use of the second person plu. in ועשיתם is undoubtedly a Deuteronomic editorial substitution for an original ועשו.

[75] Literally, "a witness of violence."

[76] Literally, "that which is turned aside, perverted."

[77] לפני יהוה is probably RD, or more probably even RP, just as הכהנים ו' certainly is.

circumstances the eye or tooth of the false witness should be knocked out or his hand or foot cut off, but also that bodily mutilation in this manner was a customary form of punishment in ancient Israel, since this punishment of the false witness was merely the result of the application to him of the principle, "as he intended to do to his brother, so shall ye do unto him." But the very fact that in all the Biblical legislation, outside of the *lex talionis* itself, in its three statements, we find bodily mutilation of this kind prescribed as a punishment only once,[78] proves conclusively that this was not only not a common, but that it was even an extremely uncommon form of punishment in ancient Israel.[79] But if this be granted, as it must, then it is clear that "eye for eye, tooth for tooth, hand for hand, foot for foot" in the *lex talionis* here can have little or no direct bearing upon the portion of the *mišpaṭ* which precedes, since seldom, if ever, would these have been the actual punishment involved in the original crime and contemplated in the mind of the false witness. The suspicion arises therefore that perhaps the *lex talionis* even here is after all not a part of the original *mišpaṭ*, but is a later, editorial addition. And this suspicion finds strong confirmation in the realization that the *mišpaṭ* is perfectly complete and comprehensible without the entire *lex talionis* here, even the element, "life for life."

---

[78] In Deut. 25.11–12. There the cutting off of the hand is probably to be explained by the assumption that it was the part of the woman's body which had sinned ritually and had therefore been defiled (cf. below, p. 202). For Lev. 24.19f., which seems also to prescribe bodily mutilation as punishment, cf. below, p. 81, note.

[79] This is all the more significant, since bodily mutilation was a quite common form of punishment in CH, CA and CHt; cf. Ring, *op. cit.*, 38. Likewise in Moslem practice cutting off of the hand in punishment of theft is a common practice, ordained in the Koran (Sura 5, 42) and continued until the present day (cf. Damiri, *Ḥayyat al-Ḥayyawān* 204, 237 (ed. Cairo, 1221 a.H. [transl. Jayakar, I, 242, 281]); *Travels of Ibn Batoutah* (transl. of Defrémery and Sanguinetti) I, 353; Burckhardt, *Notes on the Bedouins and Wahábys*, 301; Wellsted, *Travels in Arabia* (German ed.) II, 316; Lane, *Arabian Society in the Middle Ages*, 17; von Maltzan, *Reisen in Arabien*, I, 261, 294, 308, 319, 339; Featherman, *The Aramaeans*, 427; Jennings-Bramley, in *PEF*, 1905, 216; Kahle, in *PJB*, 1911, 103; Jaussen, *Coutumes des Arabes au pays de Moab*, 203, 204; Rutter, *The Holy Cities of Arabia*, I, 164f.; among the Shiites of Persia, Adams, *Darkness and Dawn*, 60, 62. For the cutting off the index finger of the witness who has testified improperly and unjustifiably, even though truthfully, cf. Jaussen, *op. cit.*, 194f.

Still further confirmation is given to this conclusion by a careful analysis of the entire chapter, Deut. 19. It is clear that v. 14 has absolutely no connection with either what precedes or what follows. It is equally clear that v. 15 is in direct and utter contradiction with vv. 16ff.; for v. 15 says emphatically that a case may not be settled, nor a crime considered proved on the testimony of one witness alone, while vv. 16ff. clearly assume that the testimony of this one false witness would suffice to convict the defendant, did not the judges find out in time that his testimony was false. Unquestionably v. 15 is secondary here, and has been introduced into its present position, immediately preceding vv. 16ff., just in order to qualify the procedure recorded there and to enforce the point of view of a somewhat later age and a more developed judicial practice, that the testimony of one witness alone was not sufficient to convict, and that therefore the false witness of vv. 16ff. could not by his testimony alone have brought about the conviction of the defendant; in other words, through the insertion of v. 15 here the application of the law in vv. 16ff. was considerably restricted, in accordance with a far milder judicial spirit than that which animated the rigorous early post-exilic period.[80]

---

[80] Similarly in Deut. 17.6–7 the law providing that conviction may be made only upon the testimony of at least two witnesses, and not upon the testimony of a single witness, with the added provision that in the execution of the death-sentence the witnesses upon whose testimony the criminal was found guilty and condemned to death, must cast the first stone, likewise represents a late, editorial addition to the original Deuteronomic *mišpaṭ*, designed, in the milder judicial spirit of a much later age, to lay a definite restriction upon the too general and rigorous application of the original *mišpaṭ*. In this connection it is interesting to note that Islamic law requires the testimony of four witnesses to prove a case of adultery (Rutter, *The Holy Cities of Arabia*, I, 186). The secondary character of vv. 6–7 here is almost self-evident from their position at the very end of the *mišpaṭ*; they give there the appearance of a late appendix to the original *mišpaṭ*. And it is significant that this *mišpaṭ* too is perfectly complete without these two verses.

It is quite clear too that Num. 35.30, a part of the Priestly legislation dealing with the question of blood-revenge and the right of the slayer to

But if vv. 14–15 are secondary in Deut. 19, then it follows that vv. 16ff. must have followed originally upon vv. 1–13. In these verses the procedure with regard to the person who kills a man, whether wilfully or accidentally, is dealt with.[81] Vv. 4–5 give two illustrations of what constitutes accidental, unpremeditated slaying. It is clear from the nature of these two illustrations that the distinction between accidental and wilful slaying was drawn quite rigorously. Vv. 11–13 deal with the particular question of the procedure in case of wilful murder. They offer no illustrations of what constitutes wilful murder, and actually no illustration was necessary, since naturally every slaying which was not regarded as accidental was necessarily considered wilful murder. But it takes only a moment's thought to realize that vv. 16ff., following immediately upon vv. 11–13, have something of the character of an illustration of what constituted, or at least was tantamount to, wilful murder. They say practically this: If a witness testifies falsely against a man, with the purpose of having him condemned to death,[81a] and then in the course of the

---

asylum in the cities of refuge, must be based directly upon Deut. 19, with v. 15 already inserted, and likewise that it must have interpreted v. 15 as referring, not so much to what follows, in vv. 16ff. as to what precedes, in vv. 1–13; apparently therefore v. 14 had not yet been inserted into Deut. 19 at the time of the composition of Num. 35.30, for in such case it would have been more difficult to correlate v. 15 with vv. 1–13 than with vv. 16ff.

[81] The chapter is by no means a literary unit. Only vv. 2–6, 11–12 can constitute the original D1 nucleus of this legislation. Vv. 1, 7–10, 13 have all the earmarks of post-exilic composition, such as the ideas of the conquest of the seven traditional, pre-Israelite nations (v. 1), and of the ultimate conquest of the entire earth (vv. 8–9; v. 7 is connective and editorial), and of the purging of the land of ritual defilement (vv. 10, 13; v. 10 followed directly upon v. 6 before the insertion of vv. 7–9).

Vv. 16–19a, even though seemingly an illustration, or at least represented as a specific instance or equivalent, of wilful murder, was not a part of the original D1 legislation here, but, quite obviously, was inserted here by the post-exilic Deuteronomic editor, as the refrain in v. 19b, ובערת הרע מקרבך, and likewise the equally characteristic, though somewhat less common, Deuteronomic thought in v. 20 indicate. In all likelihood, however, as has been said, vv. 16–19a were extracted by this Deuteronomic editor from an ancient, pre-Deuteronomic corpus of *mišpaṭim*, with perhaps a few internal, minor, editorial changes.

[81a] Menes (*op. cit.*, 119) would interpret לענות בו סרה as "to charge him with attempted apostasy," with reference to the *mišpaṭ* in 13.2–6. If this

investigation of the case by the judges it developes that the witness has testified falsely, then this shall be regarded as practically tantamount to the innocent defendant having been killed by the false witness, and therefore the latter shall be put to death; as he intended to do to the defendant, so shall be done unto him. Interpreted in this manner, the unity of thought in the chapter becomes self-apparent. But if this interpretation of vv. 16ff. be correct, then again it is clear that these verses did not in any wise contemplate the possibility of punishment of the false witness by bodily mutilation, but instead contemplated only the death sentence. This is further proof that the *lex talionis* here is not original and integral, but is beyond all question secondary, an editorial expansion.[81b] This is proved still further by the fact that the *lex talionis* here follows the regular Deuteronomic editorial formula, ובערת הרע מקרבך. Had the *lex talionis* been original here, it would certainly have preceded this formula.

A similar conclusion must be reached with regard to the presence of the *lex talionis* in Lev. 24.17–20. The text is obviously in considerable disorder. Vv. 17–21 repeat three times, and in

---

interpretation were correct it would mean that this *mišpaṭ* here must be dependent upon that in 13.2–6; and since we hold that that *mišpaṭ* is entirely of Deuteronomic origin and not at all a Deuteronomic adaptation of an older, pre-Deuteronomic *mišpaṭ*, it would follow in such case that this *mišpaṭ* here, contrary to our conclusion, must be also of Deuteronomic origin and comparatively young. Two considerations, however, disprove Menes' interpretation completely. In the first place the *mišpaṭ* in 13.2–6 implies clearly that the guilt of the false, apostatizing prophet is established, not by the testimony of witnesses before recognized judicial authorities, but by the consensus of opinion of the people at large, so many of whom must have heard the apostatizing words that no further evidence nor investigation is necessary. And, in the second place, v. 17 here states explicitly that this *mišpaṭ* deals, not with the case of a false, apostatizing prophet, but with a purely civil or criminal case involving a disagreement between two men, two litigants, in which in some way or other the death penalty is involved. Menes' interpretation is therefore completely unjustified.

[81b] It is interesting and not without significance that Menes (*ibid.*), arguing in the same way, though entirely independently, that only the death penalty is involved in this *mišpaṭ*, and not the remaining provisions of the *lex talionis*, has reached the same conclusion, that the *lex talionis* is not original here.

slightly varying forms, the principle that he who strikes another man and kills him shall be put to death, and likewise repeat twice the principle that he who kills an animal, of course a domestic animal, must make restitution for it. It is clear that there has been considerable editorial revision and expansion of this short passage. It is noteworthy that here *nefeš taḥat nefeš*, "life for life," usually the opening statement of the *lex talionis*, is separated from the remainder of the statement in its customary form, and is appended, strangely enough, to the first formulation of the command that, if a man kill an animal, he must make restitution for it, "life for life." This is, of course, sheer nonsense. Had it said "animal for animal," *behemah taḥat behemah*, the meaning would have been clear and the expression forceful. As it is, it is difficult to avoid the conclusion that something is wrong here, and that *nefeš taḥat nefeš*, where it stands now, is distinctly out of place.

Furthermore, in v. 20, where the formulation of the *lex talionis* is resumed, it is indeed surprising to find that, contrary to what was seemingly the logical and customary order, *šeber taḥat šeber*, "broken bone for broken bone," precedes *'ayin taḥat 'ayin* and *šen taḥat šen*, "eye for eye" and "tooth for tooth." The fact that in Ex. 21.26–27 the destruction by the master of the eye or the tooth of a slave entitled the latter to manumission, shows that the loss of a tooth, quite as well as that of an eye, was regarded as a major and permanent injury, far more serious than the breaking of a bone. Therefore, in both Ex. 21.23f. and Deut. 19.21, *'ayin be'ayin šen bešen* or *'ayin taḥat 'ayin šen taḥat šen* follow logically immediately after *nefeš benefeš* or *nefeš taḥat nefeš*. Accordingly the conclusion seems justified that originally here too *nefeš taḥat nefeš* was not dissociated from the remainder of the *lex talionis*, and that this present separation came about through the peculiar processes of textual accretion. Unquestionably the original text contained only one single statement of the laws providing for execution of the manslayer and restitution for the slain animal. The logical order of the three laws contained in this passage would have been (1) he who kills a man shall under all conditions be put to death; (2) he who inflicts a wound upon a man, so shall be done to him; (3) he who kills an animal shall make restitution for it. We must accordingly regard vv. 19a and 21b as secondary.

However, this does not yet solve the problem completely, since v. 18b, *nefeš taḥat nefeš*, is still separated from the remainder of the customary statement of the *lex talionis* in v. 20a. The statement of the law in v. 19 is complete in itself, "he who inflicts a wound upon a man, just as he did so shall be done unto him." Actually no further amplification of the thought is essential, although it cannot be denied that the addition of v. 20a does make the thought a bit more explicit. Unquestionably v. 20b is editorial. Furthermore, it is clear that the entire *lex talionis* can not apply to the law that he who injures a fellow-man shall have a corresponding injury inflicted upon him, for the "life for life" principle has no bearing upon this law, but instead has bearing only upon the preceding law. Therefore, if original, *nefeš taḥat nefeš* must have followed immediately upon v. 17; and actually it does so follow if we conclude, as we have done, that v. 18a is secondary here, and that the thought of this verse is in its logical place in v. 21a. But it must be admitted likewise that in such case *nefeš taḥat nefeš* follows very loosely upon v. 17, and is not only not essential, but is even a bit disturbing to the thought.

The simplest solution of this problem therefore seems to be this, that since, on the one hand, the breaking up of the customary statement of the *lex talionis* into two parts and the application of these two parts to two separate laws seem rather anomalous and since, on the other hand, *nefeš taḥat nefeš*, the customary first part of the *lex talionis*, fits but poorly and is altogether unnecessary to the law to which it is appended, while the second part of the *lex talionis*, even though it does fit perfectly to the law to which it is appended, and does even make its meaning a bit more explicit, is none the less not at all essential to it, and since likewise this second part of the *lex talionis* is expressed in a somewhat unusual and illogical order, the entire statement of the *lex talionis* here in Lev. 24.18b, 20a is not original, but is the work of some late editor or glossator.[82]

---

[82] Since the thought of v. 17 seems to be complete in every way without the addition of *nefeš taḥat nefeš*, and since this seems to have been added by

Accordingly the conclusion seems warranted and unavoidable that in none of the three Biblical passages in which it occurs is the *lex talionis* original, but is in every case the result of late,

some editor, the question arises, why should this addition have been felt to be necessary or even advisable? This question can, of course, be answered only by way of surmise. It is clear, however, from Num. 35.31ff. that at one time the practice obtained in Israel, as it seems likewise to have obtained among the majority of the Semitic peoples at a certain stage of their cultural evolution, to accept blood-money from the murderer or his clan in lieu of blood-revenge. This would be a perfectly natural development and would mark a definite cultural advance from the more primitive stage in which blood-revenge was exacted literally and mechanically. It is to just this stage that the Bedouin have advanced today. Num. 35.31ff., however, records a further stage of development in this institution. It forbids the acceptance of redemption-money for the life of the murderer, but requires his actual execution, in punishment for his crime. This is, of course, the stage to which most so-called civilized nations have advanced today.The reason given for this legislation is most significant. The murder itself has defiled the land by putting blood, i. e. the blood of one slain without cause, *dam naqî* (cf. above, note 52), upon it. This defilement can be removed or atoned for only by the slaying of the murderer himself; the acceptance of redemption-money would not have the same effect. And the land must be purified of all defilement and kept ritually pure, for in it Yahwe dwells, in the Temple, in the midst of the people, protecting them and guaranteeing them eventual salvation by His very presence among them. This consideration, involving, as it does, the welfare and future hope of the entire people, outweighs everything else. The slaying of the murderer therefore bears many of the earmarks of an expiatory sacrifice, as v. 33b states explicitly. Num. 35 is in its entirety P, and the thought in vv. 31ff. bears all the earmarks of Priestly theology. And in the light of the significance attributed in the early post-exilic period to the idea that Yahwe was dwelling in Israel's midst, and the consequent necessity of at all costs maintaining extreme sanctity, both ritual and moral, we can understand readily the extreme rigorism of much of the early post-exilic legislation and ritual procedure and in particular just why the former custom of accepting redemption-money for the life of the murderer should have been abrogated, and the older practice of executing the murderer himself, but now under the jurisdiction of the people as a whole, should have been introduced. This will account also for the not infrequent repetition of this same principle in P. (Cf. Gen. 9.5f., and note particularly that in v. 6 this principle is couched in the characteristic form of a *ḥoq*, with merely a slight modification of the customary *mot yumat* in the apodosis. We have suggested already that the *ḥoq* is a comparatively late, possibly even post-exilic, legal formulation. Proof of this contention we shall offer in the proper place.)

Lev. 24.17 is one instance of the reaffirmation of this ancient principle. Recognizing that this passage is Priestly (Pg or Ps probably, and not Ph), we and probably in every case post-exilic glossation or editorial reinterpretation and expansion. This law, if such it may really be called, seems to have been current in ancient Israel as a kind of legal maxim or axiom, expressing the fundamental principle of justice between individuals. It was apparently current in the general form, *nefeš taḥat nefeš* (or *nefeš b*e*nefeš*) *'ayin taḥat 'ayin*

---

can understand its true import here, that, precisely like Num. 35.31ff., it commands uncompromisingly the execution of the death-sentence upon the murderer, in opposition to the older practice, which undoubtedly continued to have many advocates, particularly among the adherents of the anti-Priestly party (which in the late, post-exilic period must have been quite strong, and which eventually developed into the Pharisaic party), of accepting redemption-money for the life of the murderer. This thought and purpose were definitely enforced by the addition of *nefeš taḥat nefeš* by a later glossator or editor, animated by the same point of view. And this customary introduction of the axiomatic *lex talionis* quite naturally attracted the remainder thereof as an amplifying statement or interpretation of v. 19.

Unquestionably, too, in an age which willingly accepted redemption-money for the life of a murderer, redemption- or blood-money, as it is more generally called, must also have been accepted regularly for injuries and wounds dealt by one man to another. This too is the regular practice among the Bedouin today. The principle which Lev. 24.19 expresses is definitely recognized among the Bedouin, but is always interpreted as meaning the payment of blood-money in specifically systematized amounts, according to the nature of the injury (cf. Musil, *Arabia Petraea*, III, 366ff.; Jaussen, *Coutumes des Arabes au pays de Moab*, 186f.; *Naplouse*, 143f.; Kennett, *Bedouin Justice*, 115ff.). With this consideration in mind we must either interpret Lev. 24.19 as meaning, despite its obvious literal sense, that a fitting sum was to be accepted as blood-money in compensation for the injury, or else, if interpreted with absolute literalness, we must regard v. 19 as representing a return to a more primitive, barbarous and mechanical practice of justice than the age immediately preceding had known. But it follows equally, even despite the reenforcement which the addition of the second part of the *lex talionis* seemingly was intended to give to this law, that it was never enforced literally. At least neither Biblical nor Rabbinic literature offer the slightest evidence of its literal enforcement. Consequently, despite the apparent implication of this law, Deut. 25.11–12 remains the only Biblical law in which bodily mutilation is specifically prescribed as the punishment for an offense of any kind whatsoever (cf. above, note 78).

Certainly there can be no doubt, in the light of all these considerations, that the insertion of the *lex talionis* in Lev. 24. 18b and 20a is the work of RP or of some Priestly glossator, and was apparently intended to enforce the peculiar Priestly revival of the old practice of putting the murderer to death instead of accepting redemption-money in exchange for his life.

šen taḥat šen yad taḥat yad regel taḥat regel, etc. with varying formulations in the conclusion, *šeber taḥat šeber*, as in Lev. 24.20, or *kᵉwiyyah taḥat kᵉwiyyah*, etc. as in Ex. 21.23–26. It must likewise have been susceptible to application in varying ways and to varying conditions.[83]

The law, maxim or axiom, whichever we may choose to call it, undoubtedly had its origin in the conditions of early, primitive, Semitic, nomadic life, and particularly in connection with the institution of blood-revenge. It is still, though almost entirely in theory rather than in actual fact, a definite principle of Bedouin justice today. Musil says,[84] "The practice of blood-revenge is regarded in those districts in which there is no positive jurisdiction of a centralized state government, as one of the most meritorious institutions. For if a man had no blood-avenger behind him, he would be compelled to rely for protection upon God and himself alone, and therefore would be in constant danger of losing his life through some act of violence. But if one has a blood-avenger, he can feel that his life is secure and that even in the desert he is quite as safe as upon the busiest street of a European metropolis. Every drop of blood shed must be expiated by the blood of the murderer, or, as the axiom says;

"Bone for bone, blood for blood, *'azm bi'azm, damm bidamm*!"
"Man for man, life for life, *zalame bizalame, rûḥ birûḥ*!"

Likewise Jaussen says,[85] "It is not one of the tasks of the *qaṣṣāṣ*[86] to impose the punishment of *talio*, i. e. to inflict upon the offender a wound equal to that of his victim. This brutal law of compensation is not unknown in the desert, . . . but such measures ought not today be ascribed to the official decisions of the *qaṣṣāṣ*; they are rather procedures of private vengeance."[87]

---

[83] The statement of the *lex talionis*, or at least of the first part of it, *nefeš bᵉnefeš*, might also with perfect propriety have been inserted by some glossator to follow immediately upon Deut. 19.12.

[84] *Arabia Petraea*, III, 359.

[85] *Coutumes des Arabes au pays de Moab*, 187.

[86] The *qaṣṣāṣ* is the judge who decides cases involving wounds and their compensation; cf. Jaussen, *op. cit.*, 185ff.

[87] Haddad, "Methods of Education and Correction among the Fellâhin," *JPOS*, III (1923), 43f., records an interesting case of a present-day application of the *lex talionis*. A wounded B, his cousin and older than himself, in the arm

Unquestionably in ancient Israel, and in fact among other ancient Semitic peoples,[88] the principle underlying the *lex talionis*, rooted so obviously in the institution of blood-revenge, must have survived in axiomatic form as a relic of an earlier, only half outgrown stage of nomadic culture, and must have had varying application to legal questions and situations. No doubt in Israel it found frequent application, though certainly with such interpretation and modification as the prevailing culture and dominant point of view of the age lent to it. It is by no means an insignificant coincidence that the only three cases in the Biblical legislation in which the principle found specific application are all seemingly the product of the post-exilic period and reflect an extreme and rigorous point of view significantly characteristic of the life and theology of that period.

Returning now to Ex. 21.22ff. it may be regarded as fairly certain that vv. 23b–25 are not original, but represent an editorial revision, coming probably from the post-exilic period. But certainly v. 23a is original, for the case dealt with in v. 22 would be incomplete without the consideration of the condition with which v. 23a deals. It is clear therefore that 23a must have been followed by something, the place of which vv. 23b–25 have taken. Nor can there be any doubt just what the general character of this original statement must have been. It must have provided for a definite fine, the payment of blood-money, in amount considerably larger than that provided for in v. 22, in case permanent injury, and particularly death, resulted to the woman from the abortion.[89] Whether any other form of punishment accompanied

---

with a knife. The case was submitted to the village court for trial. A was sentenced to have his arm amputated by B, but B was granted the privilege of pardoning A, if he so chose. After A had declared to B his willingness to submit to this penalty, B pardoned him. Here the underlying principle is manifestly "arm for arm."

[88] Cf. for example CH, §§ 196, 197, 200; CA, § 54 and the note of Jastrow, *JAOS*, 41 (1921), 49, note 59, and also the instance cited by Jaussen from Bohari (*op. cit.* 187, note 1) and in particular the statement of the general principle in the Koran (Sura 5.49).

[89] For a discussion in comparison with the provision here in Ex. 21.22ff., of the same case and the provisions for money-payments and other additional fines, in CH, CA and CHt, cf. Ring, *op. cit.*, 98ff., 177ff. Among the Bedouin

this payment of blood-money, it is, of course, impossible to determine.[90] Not improbably the substitution of the *lex talionis* here, in place of the original penalty provided for this offense, was in accord with the dominant point of view of the post-exilic age which we have noticed, which, for theological reasons, was far more rigorous than the late pre-exilic practice, in demanding the actual execution of the murderer or man-slayer as an act of expiation for the blood which had been shed, and which defiled the land and endangered Yahwe's continued residence in the midst of the people.[91]

today, if a pregnant woman is struck and an abortion results, the responsible party must pay to the husband the price of a full-grown man, if it can be established that the child to be born was a male, otherwise the full price of a woman. If the mother dies as the result of the abortion, the price of a full-grown woman must be paid in addition (Musil, *Arabia Petraea*, III, 368; Jaussen, *Coutumes des Arabes au pays de Moab*, 225). The price of a woman is regularly only one half that of a man, except in certain exceptional circumstances, when it becomes four times that of a man; cf. Musil, *ibid.*; Jaussen, *ibid*, 195; Kennett, *Bedouin Justice*, 60, 75f., 98; Haddad, "Blood Revenge among the Arabs." *JPOS*, I (1921), 111 (also *ZDPV*, 40 [1917], 235).

[90] CH §210 provides that in case the expectant mother dies as the result of the abortion, the daughter of the responsible party shall be put to death. CA §49 provides that in case of an abortion resulting from a blow dealt the woman by a man not her husband, the wife of the responsible party shall be dealt with in the same manner, and in addition blood-money, representing the value of a human life shall be paid; cf. Ring, *op. cit.*, 98. It might be asked in this connection, just why should the particular case of a pregnant woman be singled out for specific legislation, when other peculiar and specific instances of murder or manslaughter, undoubtedly also requiring specific legislation, might just as well have been cited. Perhaps the answer may be suggested by a practice still generally current among the Bedouin, which accounts wounds dealt a woman as of much graver character than those dealt a man, and therefore to be compensated for by a much higher blood-fee than wounds dealt to a man. Generally the blood-price of wounds dealt to a woman is four times that of wounds dealt to a man, though occasionally it is even eight times as much (cf. Jaussen, *Coutumes des Arabes au pays de Moab*, 188, 225; for a different point of view and practice, cf. Kennett, *Bedouin Justice*, 125, 131ff.). In this connection it is interesting and even significant to note that CHt §1 provides that if a person kills a man or a woman, in addition to having the body disposed of in customary manner he must give four persons, men or women, as the case may be, in payment (cf. Ring, *op. cit.*, 172). This seems to be completely identical with the Bedouin practice.

[91] We should probably recognize the possibility that the reference in

To sum up the results of our investigation thus far: the nucleus of Ex. 21.1–27 consists of vv. 2–11, 20–21, 26–27. This consists of four well coordinated *mišpaṭim*, all dealing with Hebrew slave problems, and for the most part and primarily with various ways in which a Hebrew slave secured his or her freedom. These four *mišpaṭim*, as we shall see more clearly later, must have been extracted by the editors of C from some old corpus of *mišpaṭim*, in which they probably stood in close juxtaposition and constituted either the whole, or at least a part, of one section of the corpus. Probably extracted also from the same corpus, where, however, they must have stood in some other connection, are the *mišpaṭim* in vv. 18–19 and 22–23a, and also the *mišpaṭ* which must have stood originally where v. 12 stands now, and for which this verse was later substituted. Of this last *mišpaṭ* vv. 13–14 in their original form must have been the continuation. These three *mišpaṭim* represent the first editorial expansion of the *mišpaṭ* portion of C, and are altogether in its spirit. At a much later date, probably in the post-exilic period, and not impossibly by Priestly editors, as we shall see in due time, the *ḥoq* in v. 12 was substituted for the *mišpaṭ* which stood there previously; vv. 13–14 underwent certain editorial modifications; the *ḥuqqim* in vv. 15–17 were inserted and likewise the statement of the *lex talionis* in vv. 23b-25. V 1 was the work of the RC editor who, in the pre-exilic period incorporated the *mišpaṭim* into C, the legislative section of which up to that time consisted only of the *d^{e}barim* which constituted the original nucleus of C. In this way Ex. 21.1–27 acquired its present form.

The second section of the *mišpaṭim* of C extends from 21.28 through 22.14. Its organization is comparatively simple and the literary processes by which it gradually assumed its present form are much more self-evident and readily comprehensible than is the case with the *mišpaṭim* in 21.2–27. We have shown already that this entire section of *mišpaṭim* deals with various legal problems incidental to the keeping of domestic animals, especially

vv. 26–27 to injury to the eye and tooth of the slave may also have contributed somewhat to the attraction to this particular position, immediately preceding it, of the statement of the *lex talionis* in vv. 23b–25, with its reference to "eye for eye and tooth for tooth."

oxen. Its nucleus consists of four *mišpaṭim*, found in 21.28–32, 35–36; 37 plus 22.2b–3; 9–12; 13–14. Whether the *mišpaṭ* in 22.4 was original in this section or is of secondary character is a question still to be answered. Into this original body of *mišpaṭim* four secondary *mišpaṭim*, of somewhat related character, have crept, viz. 21.33–34; 22.1–2a; 5; 6–8. And if we should conclude that 22.4 is a secondary *mišpaṭ*, it would follow that the number of secondary *mišpaṭim* would then be five and of primary *mišpaṭim* four; if, however, we should conclude that 22.4 is an original *mišpaṭ* here, then these numbers will be reversed.

The first *mišpaṭ* says this: If an ox gores a free man or free woman so that the latter dies in consequence, the ox shall be stoned and its flesh shall not be eaten, but its owner shall not be held responsible. But if it was known to be an ox which had gored previously, and its owner had been warned thereof but nevertheless he had not kept it under safe restraint, and it kills a free man or woman, the ox shall be stoned and its owner shall likewise be put to death. If, however, redemption-money is imposed upon the owner, then he shall pay as the redemption for his life whatever amount may be imposed upon him. If the ox gores a child, whether male or female, the same procedure shall be followed. If the ox gores a male or female slave, then its owner shall pay thirty shekels to the owner of the slave and the ox shall be stoned. If the ox gores the ox of another man so that it dies, then the owners of the two oxen shall sell the living ox and divide the proceeds and they shall likewise divide the dead ox. But if it was known to be an ox which had gored previously, and its owner did not keep it under proper restraint, then he shall give another ox in compensation, but the dead ox he may keep.

The unity of this quite extensive *mišpaṭ* and also its logical, systematic sequence of thought are self-apparent. A number of matters in it, however, require further consideration. It is clear that the *mišpaṭ* classifies the injuries resulting in death, inflicted by the goring ox, under four heads, according to their customary relative importance or value, (a) injuries to a free man or woman, (b) to the male or female child of free parents, (c) to a male or female slave, and (d) to another ox. It provides the same penalty for (a) and (b), the payment of thirty shekels, presumably the standardized value of a slave, regardless of sex, for (c), and compensation in kind for (d).

In v. 28 the use of את before the indefinite objects איש and אשה is strange indeed. Probably, however, the explanation proposed by Baentsch is correct, viz. that the particle was introduced in order to guard against the ambiguity which would result otherwise, were איש או אשה to follow immediately upon שור, with the natural first impression that שור stands in the construct relation with the nouns following.

That the ox should be stoned and its flesh not eaten is significant indeed. Certainly the explanation offered by Baentsch is incorrect, viz. that the stoning of the ox was in conformity with the law in Gen. 9.5. The fact that this passage in Genesis is from the Priestly Code and therefore of literary origin considerably later than the passage here, suffices to disprove this argument. It might, of course, be contended that the law in Gen. 9.5 was actually of much greater antiquity than its mere literary formulation there; but there is no evidence to this effect, nor is it altogether certain exactly what Gen. 9.5 does imply with regard to animals.

Rather Frazer has undoubtedly given the correct explanation of the peculiar custom formulated here as a law, viz. that the ox is executed as an act of blood-revenge for the slain person.[92] Frazer cites many instances of like procedure among primitive peoples, and even peoples relatively advanced in civilization, from all parts of the world, and proves his case conclusively. One instance which he cites[93] is of particular significance in this connection, since it records the procedure of present-day Bedouin in exactly the same situation, and therefore offers a relationship not merely of similarity, but also one of common origin with the custom here. "Among the Arabs of Arabia Petraea, when an animal has killed a man, its owner must drive it away, crying after it 'Scabby, scabby!' He may never afterwards recover possession of the beast, under pain of being compelled to pay the bloodwit for the homicide committed by the brute. Should the death have been caused by a sheep or goat in a flock, as by sending a heavy stone hurtling down a steep slope, but the particular animal which set the stone rolling be unknown, then the whole flock must be driven away with the cry, 'Away from us, ye scabby ones!' " To this Musil adds the further statement that among the Ḥanâǧre the owner of the animal which kills a man calls out, "(God) protect me against the (animal) which has killed your kinsman (literally, 'your footman'); bear witness, ye people."

---

[92] *Folk-Lore in the Old Testament*, III, 415–445.

[93] P. 419; quoted from Musil, *Arabia Petraea*, III, 368.

The import of this last statement is perfectly clear. By means of it the owner of the animal formally disclaims responsibility for the death of the person in question, and thus frees himself from all obligations of blood-revenge; at the same time, the implication is, he delivers the animal over to the family of the slain man, of course for them to do with as seems best to them. And, understanding the significance of the institution of blood-revenge among the Bedouin still today, we can hardly believe that the animal is accepted by the relatives of the slain man as compensation for his death, and is used by them thereafter. Even though Musil does not state this, it may be inferred that the animal is put to death in a formal manner by the relatives of the slain man, and that its death is regarded as being in compliance with the established principles of blood-revenge. This is also the obvious meaning of the statement that if the owner ever resumes possession of the animal, he must pay the bloodwit for the homicide committed by the brute, i. e. he takes upon himself the blood-guilt, which he discharges by payment of the blood-money, precisely as in a case of blood-revenge. Probably too the animal is regarded as being somewhat demoniac in character,[94] and therefore unclean and not to be used by mortals for profane purposes, such as eating, under any condition. This is certainly the implication of the custom of driving the dangerous animal away and forbidding its owner to ever resume its possession and use; and in particular this is the implication of the designation of the animal or animals as "scabby." The adjective, *ǧerbâ'*, "scabby," used here is, of course, of the same stem and general meaning as the Hebrew *garab*, a noun designating a certain incurable form of leprosy, affliction by which debarred a descendant of Aaron from discharging any priestly functions, i. e. rendered him ritually impure.[95] Unquestionably this is the implication of the Bedouin use of the kindred term; the killing of a man by an animal rendered that animal, or at least implied that that animal was, taboo, therefore unfit for profane use by mortals; hence the driving away of the animals. And it is quite clear what the fate of such animals, driven away ownerless out into the desert, would be; without shepherds to tend them they would either be consumed by wild beats or else would eventually perish of hunger and thirst.

---

[94] So also Jepsen, *op. cit.*, 35.

Exactly this is the implication of the Biblical procedure. That the flesh of the ox might not be eaten, in other words, that it could not be used for profane purposes, implies, of course, that it was regarded as taboo. This too is the implication of the manner of execution of the animal. It was no mere ordinary slaughtering of a domestic animal which had proved itself dangerous, no mere provision to protect the community against further danger from that particular animal. It was something far more than this. On the one hand, had the ox been put to death in the customary manner, by ordinary slaughtering, then necessarily it would have partaken to a certain degree of the nature of a sacrifice, since at this stage of the religious evolution of Israel, i. e. before the Deuteronomic Reformation, the slaughter of every domestic animal partook of a certain sacrificial character[96]; and in this particular case, just this had to be guarded against, since the ox was ritually taboo.

And on the other hand, the fact that the ox was put to death by stoning, that just this form of execution was prescribed, is most significant. For stoning, or what seems to have been the equivalent of stoning, pushing an animal over a cliff, so that its neck would be broken but its blood would not be shed, seems to have been the regular method of execution in all cases where ritual defilement or taboo, presumably in an intensified degree, was present in the person or animal to be executed. And this is readily comprehensible; for in the case of execution by stoning there is no physical contact between executioners and executed, and therefore no chance of communicating the ritual uncleanness from the executed to the executioners. Nay more, presumably each stone thus cast carried with it and loaded, through contact, upon the person or animal to be executed any measure of the ritual defilement in question which might by any chance have rested upon the executioners.

---

[95] Cf. Lev. 21.20; 22.22; Deut. 28.27.

[96] Cf. Hempel, *Die Schichten des Deuteronomiums*, 31f., 196.

Accordingly this is the form of execution prescribed in Ex. 19.13, for those who have defiled themselves ritually, coupled with the illuminating statement that no hand shall touch the persons thus to be killed, but they shall be either stoned or shot.[97] Similarly this is the method of execution prescribed invariably in Deuteronomy[98] in cases where the death of the condemned person is designed to have the effect of purging the evil from the midst of the people, in other words where the law provides, not for a simple execution, but for an execution which in addition has a positive expiatory effect. This too is the method of execution contemplated for a decidedly ritual offense in Ex. 8.22 and also in Lev. 24.13–16[99] and Josh. 7.25. Significantly too, the equivalent of stoning, viz. pushing the animal over a cliff, or some similar procedure by which its neck would be broken, is the method of killing prescribed in Ex. 34.20 for the unredeemed and unredeemable firstlings of the ass; in other words, in this way the possible implication that the slaying of these first-born might be regarded as a sacrifice to Yahwe, was guarded against. And in exactly the same way the goat of Azazel was actually put to death, according to rabbinic practice.[100]

---

[97] With arrows, of course. Obviously, from the standpoint of the taboo character of the persons to be executed, shooting with arrows was of precisely the same nature as stoning, since in neither case was there direct physical contact between executioners and executed. But since, particularly in Palestine, stones were always more plentiful and convenient than arrows, and likewise more readily used by the inexpert mass of the people, stoning was always a more common method of this form of execution than shooting.

[98] Cf. 17.7; 21.21; 22.21, 24, and below, note 184.

[99] That all the people who heard the blasphemous words must first lay their hands upon the head of the blasphemer before his execution, implies, of course, that the mere hearing of the blasphemous utterance made the hearers also guilty of blasphemy to a certain degree, or at least charged them with the ritual defilement which the blasphemous utterance had caused. Through the laying on of hands they transmitted their guilt or defilement by contact to the blasphemer himself, and thus absolved themselves from their involuntary guilt and ritual defilement. The laying on of hands by the high-priest upon the head of the goat of Azazel (Lev. 16.21f.) is stated explicitly to have been for the same purpose; cf. also Lev. 4.4, 15, 24, 29, 33.

But of even greater significance is the fact that Lev. 16.22 provides that the goat of Azazel, laden with the sins of the people and therefore ritually unclean and taboo, just as was the ox which killed a man, in Ex. 21.28, or the murderous animals among the Bedouin, should be sent forth into the desert, of course to die; this is exactly the same procedure as that with the animals of the Bedouin. There can accordingly be not the slightest doubt that the execution of the goring ox by stoning implied that the animal was regarded as ritually taboo, probably as being possessed by a demon, and that the killing of the ox in this manner implied the laying of the demon and the removal of the taboo,[101] and also that the death of the ox as an act of blood-revenge made expiation for the death of the person whom it had killed. We can accordingly understand perfectly the implication of the statement that, so long as it was not known to have gored previously, the death of the ox sufficed, and the owner was held blameless; but if the ox was known to have gored previously, then the owner was held responsible and was put to death also along with the ox.

---

[100] Mishna Yoma, VI, 3–6.

[101] Not improbably too the killing of the demoniac ox by stoning, i. e. in a manner by which its blood would not be poured out upon the ground, may also have had the more or less conscious purpose of making impossible any future reincarnation of the dangerous brute; for, with the blood not poured out on the ground, its soul or life-essence was destroyed, or at least was rendered impossible of eventual restoration to another body; cf. my, "The Bones of the Paschal Lamb," *JAOS*, 36 (1916), 146–153. Cf. also the interesting rite of the stoning of Satan at Mina during the Hajj (Burton, *Pilgrimage to Al-Madinah and Meccah*, II, 180, 219–225; Rutter, *The Holy Cities of Arabia*, I, 184ff.), and also the stoning of the *jinn* (Jaussen, *Naplouse*, 180).

But these very considerations imply not only that the execution of the ox was in compliance with the requirements of blood-revenge, but also, in the second case, if the ox had gored before, but its owner had not taken proper precautions to restrain it, then the owner too should be put to death, that the death of the owner was likewise not a mere matter of state execution, in punishment for his negligence, but was also an act of blood-revenge, although apparently under the supervision of the state, since the state seems to have determined when the death of the ox alone sufficed, and when, in addition thereto, the owner of the goring ox also had to be killed. The provision for ransom-money in redemption for the life of the owner of the ox, in v. 30, likewise points to the conclusion that this was a case of execution in blood-revenge, and presumably by the family or clan of the slain man, and not yet by the state; for it is clear that the ransom-money is paid entirely to the family or clan of the slain man, and that it is the family or clan which fixes, or at least takes the initiative in fixing, the amount of this ransom-money.[102] But this too indicates that this last is entirely a private procedure between the relatives of the slain man and the owner of the goring ox, and not at all a matter of state regulation; for in such case the amount of the ransom-money would undoubtedly have been standardized, just as it is in Lev. 27.

V. 31 offers an alternative to the condition presented in v. 28; there the *mišpaṭ* deals with the procedure in case the person killed was an adult free man or woman; here the case is that of a child, male or female, offspring, of course, of free parents. The verse provides that even in the case of children the procedure shall be precisely the same as in the case of adults.[103] The very fact that a distinction is here made between the case of adults and that of children implies with certainty that some of the legislation current in that day did take the age of the person injured into consideration and did provide for a graduated fine or penalty of some kind according to the age of the person, precisely as in Lev. 27. But the very fact too that here the *mišpaṭ* prescribes the same procedure and penalty for minors as for adults gives final confirmation to our conclusion that we have to do here, not with the ordinary question of damages or penalties imposed and executed by the state, but specifically with a case of blood-revenge, in which there is no gradation of injuries and corresponding penalties, but only one recognized procedure, viz.

---

[102] This can hardly mean that the relatives of the slain man could demand as ransom-money any compensation they chose, for there would then be no limit to the possibility of their demands. It probably means rather that, just as among present-day Bedouin, there were negotiations back and forth between the representatives of the two parties, with the relatives of the slain man, however, taking the initiative with their first demand. In this way a sum mutually acceptable was eventually agreed upon, and this was then paid by the owner of the ox. In other words, the procedure here must have been much the same as that which we have posited for the case set forth in v. 22; cf. above, note 70.

---

[103] Jepsen (*op. cit.*, 36, 64, 72) contends that v. 31b is the work of RC, substituted for something else which originally stood here, and which gave to this particular section of this *mišpaṭ* the meaning that, if the ox killed a child, male or female, the son or daughter of the owner, as the case may be, must be put to death in exchange. He offers no proof of this argument other than that, if this law had read in this way originally, it would then offer a very close parallel to the procedure prescribed in a somewhat similar case in CH §230. But while there are undoubtedly many points of close contact and obvious relationship between many of these *mišpaṭim*, and not only CH, but also CA and CHt, as both Jirku and Ring have shown conclusively, it is gradually developing in this paper that the points of contact and relationship with present-day Bedouin practice are closer and more direct and indicate that, in the main at least, these points of similarity and relationship between CH, CA, C, present-day Bedouin practice, and even CHt also, must be explained primarily by the assumption of a common origin in and individual, cultural development out of primitive Semitic custom, and only secondarily and to a minor degree as the result of direct borrowing. (So also largely, Ring, *op. cit.*, 119, 204f., for the supposed direct influence of CA and CHt upon Israelite legislation). Consequently Jepsen's assumption that the law in Ex. 21.31 must originally have paralleled CH §230 has little or no justification. Outside of a purely theoretical interpretation of Deut. 24.16, there is not the slightest evidence that any such principle ever obtained in Israel as that underlying CH §230, viz. that the person and relationship to the offender of the person executed shall correspond to the person and relationship of the party killed or injured, father for father, son for son, daughter for daughter, etc. Certainly this was not the interpretation placed upon Deut. 24.16 by the Deuteronomic authors or editors of II Ki. 14.6, for they understood the Deuteronomic law to mean only that Amaziah was forbidden to kill the children of the murderers of his father in addition to slaying their parents.

either the death of the slayer or his redemption through the payment of ransom-money. It is clear therefore that *kammišpaṭ hazzeh* in v. 31 refers, not to the procedure recorded in v. 29 alone, but to the entire procedure prescribed in vv. 28–29. V. 31 says practically this, that it is immaterial whether the person killed be male or female, adult or minor, so long as it is a free person the procedure shall be precisely the same in every case, viz. the practice of blood-revenge, assuming, of course, that the owner is held responsible, in accordance with the provision in v. 29.[103a]

V. 32 offers the next natural alternative, the procedure in case it is a slave, male or female, whom the ox kills. The provision is that the owner of the ox shall pay the owner of the slave thirty shekels. Several questions arise here as to the exact meaning of this verse. Does it mean that, regardless of whether the ox had been known to gore previously or not, these damages had to be paid, or only in case the ox had been known to gore on previous occasions and the owner had been negligent in restraining it? In itself the verse gives no indication as to the correct answer to this question. But this much is certain, that the verse makes a clear-cut distinction between the death of a free person, for whom there is to be blood-revenge, and that of a slave, for whom there is to be only a payment of damages, and these not at all to the family of the slave, but only to his owner. It is clear from this that, unlike the *mišpaṭim* in vv. 2–27, the question is no longer one of a Hebrew slave, for then there would certainly have been blood-revenge, precisely as in vv. 20–21. This *mišpaṭ* deals only with the case of an ordinary, non-Hebrew slave, and treats the case as one of damage to personal property. But recognizing this, it is obvious that the case here parallels, not so much that in vv. 28–31, as that in vv. 35–36. And just as there the *mišpaṭ* provides for compensation of some kind to be paid to the owner of the dead ox, regardless of whether the other ox was known to gore habitually or not, so here the provision of payment to the owner of the dead slave makes no distinction between the two cases of whether the ox gored habitually or not; in either case the damages are the same, thirty skekels. Manifestly too the price of slaves is standardized both by custom and legislation, and, strangely enough, no distinction in value is made between male and female slaves, nor seemingly does the age of the slave create any distinction.

[103a] In Mecca today "the blood-price for a free-woman is half that for a man, while that of a slave is equivalent to his market value"; Rutter, *The Holy Cities of Arabia*, II, 102.

Vv. 35–36, as has been said, followed in the original *mišpaṭ* immediately upon v. 32. They deal with the particular question of the ox of A goring and killing the ox of B. As has been said, the question at issue is merely one of damages to be paid by the owner of the goring ox to the owner of the slain ox. But unlike the procedure in v. 32, a distinction is naturally made here between the ox which was known to have gored previously, and in the keeping of which the owner was negligent, and the ox which had never been known to gore previously. The reason for this is obvious. In the case of the slave gored to death by the ox, this distinction was of no importance, for, regardless of whether the ox had been known to gore previously or not, certainly the ox, and not the slave, was the aggressor, and the slave was the victim; in either case therefore the owner of the ox had to pay damages. But here, in the case of the two oxen, neither of which was known to have gored previously, it could not be told ordinarily which ox was the aggressor. Not impossibly the slain ox had initiated the combat, and the living ox had merely defended itself. In such case the two oxen are placed upon an equal footing and the burden of loss is borne equally by the two owners. The living ox is sold and the proceeds are divided between the two owners, while the carcass of the dead ox is divided in the same manner.[104] But if the living ox was known to have gored before, then presumably it was the aggressor, and its owner alone was responsible for damages. In such case he had to give the owner of the slain ox another animal in its place, while he took the dead ox for himself. There is no question of execution of the goring ox in this case, for, since it had killed only another animal like itself, there was no necessity of presuming demoniac possession on the one hand, nor of exacting blood-revenge on the other hand, as in the cases dealt with in vv. 28–31.

---

[104] Among the present-day Bedouin, if the animal of A kills the animal of B, B takes A's animal in place of his own slain one; Musil, *Arabia Petraea*, III, 369. Musil does not state what is done with the carcass of the slain animal. Undoubtedly, however, it was eaten, since there was no reason why it should not be; cf. also Doughty, *Arabia Deserta*, I, 351.

Such is the legislation of the goring ox, formulated as a complex and extensive but well-unified *mišpaṭ*.

Into this original *mišpaṭ* another, simple *mišpaṭ* has crept, attracted by the fact that it too deals with a question of domestic animals and of damages to be paid to the owner of them because of the negligence of a second party. The case parallels rather closely, as is clear, that of the one ox gored to death by another ox, which was known to have gored previously, and in the keeping of which the owner was negligent. Accordingly, in conformity with the general editorial principle of C, which we have already noted, this secondary *mišpaṭ* has crept in just immediately preceding the section of the original *mišpaṭ* which deals with the question of the two oxen, viz. in vv. 33–34. This secondary *mišpaṭ* provides that in case a man opens up a cistern, which had presumably been filled up, or digs a new cistern, and neglects to put a proper cover upon the mouth, and a large domestic animal, either an ox or an ass, falls therein, the owner of the cistern must give to the owner of the dead animal another live animal in its place, but the carcass of the dead animal he may keep for himself.

It is clear that the *mišpaṭ* specifies only an ox or an ass, i. e. a large domestic animal, and makes no mention of a sheep or a goat, because, as has been said, it presumes that even should one of these small animals fall into the cistern it could as a rule be brought out without any serious damage resulting to it. But if a large animal, such as an ox or an ass, should fall into the cistern, it would presumably be impossible to draw it up alive; therefore the provision of damages only in case of a large domestic animal.

In v. 34 the words כסף ישיב, seeming to supplement ישלם, are awkward indeed and because of their loose connection with ישלם present a slight difficulty. In vv. 36, 37; 22.3, 4, *šillem* obviously means "to repay in kind." Presumably this is the meaning also in 22.2, 5, 6, 8, 10, 11, 12, 13 and 14. The natural conclusion would be therefore that this too is the meaning of *yešallem* in

21.34, and precisely this is what we would expect, since apparently all these *mišpaṭim* contemplate the payment of damages only in kind, and not in money. It would seem almost as if they date from a period in the cultural evolution of Israel when the use of money had not yet become general and payment in kind was still the rule.[105] Moreover, with these two words omitted, the contrast between לבעליו and לו becomes more emphatic and the formulation of the entire law clearer and more forceful. Presumably therefore, כסף ישיב is a gloss inserted here,[106] and that none too skillfully, to give to *yešallem* the reinterpretation of payment in money, and not, or at least not necessarily, in kind, which a later age, in which the use of money in business transactions had become fairly common, put upon the term.[107]

The next *mišpaṭ* in this section of *mišpaṭim*, found in 21.37; 22.2b–3, deals with the question of penalties for theft of domestic animals. It provides that if a thief steals a large domestic animal, such as an ox, and either slaughters the animal or sells it, in other words disposes of it so that the animal itself is not recoverable, then he shall repay five animals for the one stolen; if it is a sheep or goat, i. e. a small domestic animal, that is stolen, and is either sold or slaughtered, he shall repay four for one. If he has not the wherewithal for repayment, the thief shall be sold as a slave and, impliedly, from the proceeds of the sale the owner of the stolen animal shall be reimbursed. If the stolen animal is found alive and still in the possession of the thief, and thus is itself recovered by its owner, the thief shall pay the owner two animals of the same species in addition as penalty.[108]

The full meaning of this *mišpaṭ* is perfectly plain and requires little comment. Just why the thief should be required to restore five animals for the theft of a large domestic animal and only four for the theft of a small animal, is not clear.[109] But it is a matter of much significance that still today among the Bedouin

---

[105] Cf. Menes, *Die vorexilischen Gesetze Israels*, 25, 35.

[106] Contrary to Meek, "The Co-ordinate Adverbial Clause in Hebrew" *JAOS*, 49 (1929), 158.

[107] So also Jepsen, *op. cit.*, 37.

[108] Jepsen would transpose vv. 2b and 3a. It must be admitted that this would seem to present the thought in more orderly and logical sequence. But inasmuch as all the versions have the same sequence of thought as MT, the mere fact that a more logical thought sequence would be obtained by this transposition hardly justifies this radical step.

---

[109] Inasmuch as the penalty prescribed in 22.3 in case the stolen animal is recovered is the restoration of the stolen animal plus two additional animals given as penalty, it may be that the provision that in case the stolen animal is not recoverable the thief must give five animals in repayment and as punishment means actually the return of one animal in lieu of the stolen animal plus four additional animals as penalty, i. e. twice the penalty in case the stolen animal is recovered. This is, however, only a conjecture; nor does it explain why only four animals should then be given if it was a small domestic animal that was stolen and not recovered. In all likelihood this practice of giving four animals in addition to the recovered stolen animal originated in and represents a survival from the early, pre-Canaanite, desert, nomad period of Israel's cultural evolution. In all likelihood too the original underlying motive for this specific penalty had been forgotten completely by the time of the incorporation of this *mišpaṭ* into C, and even perhaps already at the time when this *mišpaṭ* was cast into its fixed literary form in the older *mišpaṭ*-corpus from which the C editors borrowed it, and only the knowledge of the custom itself survived.

It is interesting to note that II Sam. 12.6 agrees fully with this legislation, in providing the repayment of four sheep for the one stolen sheep. LXX, however, reads "sevenfold" instead of "fourfold," and this reading is accepted by Driver, Smith, Budde and Nowack as the original, upon the supposition that the change from "sevenfold" to "fourfold" was made in order to make this narrative and the judicial decision of David accord with this law in Ex. 21.37. Furthermore, Prov. 6.31 provides for a sevenfold repayment by a thief, although it does not specify that this deals particularly with the theft of domestic cattle. It is not impossible that by the time of the composition of Proverbs economic conditions had changed to such an extent from what they were at the time of the composition of Ex. 21.37, that a sevenfold compensation had come to supersede the fourfold compensation of the older legislation, and that accordingly the LXX reading of II Sam. 12.6 represents the post-exilic practice while MT records the pre-exilic practice. But careful consideration suggests that II Sam. 12.6a is itself an editorial, harmonistic gloss, and that v. 6b originally followed upon v. 5. For certainly the point of the parable is that David is led to condemn himself, and that not to a punishment as mild as the repayment of four for one, but rather to the death penalty, which in v. 5 he had himself proposed for the offence described by Nathan. Moreover, the thought of v. 6b, and particularly the specification that the rich man had shown no mercy to the poor man, has no force whatever, following upon v. 6a, but, following immediately upon v. 5, it does explain fully the unusual severity of the sentence which David would impose. These considerations seem to justify the conclusion that v. 6a is an editorial, harmonistic gloss, introduced here to make the decision of David conform with that of Ex. 21.37. Consethe regular penalty for the theft of domestic animals is the repayment of four animals for the one stolen.[110] These four animals include the stolen animal, if it is still recoverable; otherwise another animal is substituted for it. No distinction is made between large and small domestic animals. Unquestionably the relationship between the Biblical *mišpaṭ* and the present-day Bedouin practice is very close. This is all the more significant when we realize that all the Old Oriental law codes thus far discovered offer very little contact with this particular *mišpaṭ*.[111]

Into this simple *mišpaṭ* another *mišpaṭ*, of somewhat related import, has crept, disturbing the sequence and confusing the thought of the original *mišpaṭ*, in no small measure. It is found in 22.1–2a.[112] Its secondary and disturbing character has been recognized by most modern scholars. This secondary *mišpaṭ* provides that if a thief is caught in the act of breaking in and is struck and killed, if this occurs at night there shall be no blood-revenge for his death, but if this happens after sunrise there shall be blood-revenge. It is clear that this is not at all a special provision bearing only upon the case of the theft of domestic animals treated in 21.37; 22.2b–3, but is a general provision bearing upon all cases of theft. As has been suggested already, this *mišpaṭ* may well have stood elsewhere in the original, ancient corpus of *mišpaṭim* from which all, or at least most, of these *mišpaṭim* in C were extracted, and have been inserted here by RC because of its indirect bearing upon the question treated in the original *mišpaṭ*.

It is clear that this secondary *mišpaṭ* does not discuss at all the question of the penalty to be imposed upon a thief caught in the act, but merely the question of whether the family of the thief, slain while in the act of breaking in, should have both the duty and the right of blood-revenge for their slain relative. The

sequently neither this passage nor Prov. 6.31 throws any additional light upon the law with which we are dealing.

[110] Jaussen, *op. cit.*, 194f., 201f., 230; Musil, *op. cit.*, III, 348, 369.

[111] Cf. Jepsen, *op. cit.*, 65; Ring, *op. cit.*, 152.

[112] שלם ישלם at the beginning of 22.2b is unquestionably editorial, its insertion being necessitated by the resumption of the thought of 21.37, after the interruption caused by the insertion of the secondary *mišpaṭ* in 22.1–2a.

answer is that if this happened at night there shall be no blood-revenge, but if by day there shall be blood-revenge. Manifestly this *mišpaṭ* still accepts blood-revenge as an active and approved institution, and dates from a period when its practice was still in full swing, but when the state, or else perhaps popular custom, had already begun to regulate it and determine at least when blood-revenge might or might not be exacted. It seems to imply that if the thief was killed by day, when presumably it could be recognized just who he was, or when at least help could be readily summoned and his depredations easily guarded against, his death was to be considered as intentional on the part of his slayers and therefore necessitated blood-revenge. But if he was slain at night, when presumably he could not be recognized, and when, moreover, it could not be determined readily whether he was alone or had confederates, and when help could not be summoned easily, then his death could in no wise be regarded as intentional, and therefore there could be no ground for blood-revenge.

There seems to be considerable variation in the Bedouin practice paralleling this *mišpaṭ*. According to Musil,[113] a thief caught in the act of breaking into a tent to steal, or of attempting to drive off animals from the herd or flock, may be killed without blood-revenge being exacted. According to Jaussen,[114] however, just the reverse is the practice today, and blood-revenge is exacted for the slaying of a thief even though caught in the act. According to Kennett,[115] the Egyptian civil code and Bedouin practice are in direct contradiction in their estimate of the gravity of thefts and other crimes committed at night, the former providing a more severe punishment for such cases, and the latter, acting upon the presumption that during the day the men are all away from the encampment and only the women are left in the tent, while at night the men are present, providing a more severe penalty for such crimes committed during the day. Contradictory, however, though this evidence is, it seems to point to two distinct conclusions, (a) that formerly the general Bedouin practice was that blood-revenge should not be exacted for the death of a thief killed while in the act of breaking in, and (b) that a distinction was made between such crimes committed in the night and those committed by day, with the more severe penalty prescribed for whichever of the two conditions seemed to offer the minimum of protection to the victims of the proposed theft. This would accord fully with the practice recorded in the Biblical *mišpaṭ*, and establish again the close relationship between and the presumption of a common origin for the Biblical law and the Bedouin practice.[116]

---

[113] *Op. cit.*, III, 360; however, according to the information which Musil records upon p. 348, this practice varies somewhat among the different tribes.

[114] *Op. cit.*, 230.

[115] *Bedouin Justice*, 31f.

The meaning of the *mišpaṭ* in 22.4 is somewhat uncertain, due to the ambiguity of the root *bʿr*, occurring in it three times. The root *bʿr* in the *Hifʿil* can mean either "to burn" or "to pasture cattle." Either meaning would convey an excellent sense in this verse. Apparently all the ancient versions interpreted this verse as referring to the pasturing of cattle in the field of another man. Hoffmann[117] seems to have been the first to interpret *bʿr* in this verse in the sense of "to burn." In this he has been followed by a number of scholars, notably Baentsch and Ring. To justify this interpretation of the verse בעירה must be amended to הבערה, an emendation which is in itself not difficult, and which is strengthened by the presence of הבערה in the next verse.[118] Thus interpreted the *mišpaṭ* would mean: "If a man burns off his field or vineyard, i. e. destroys the weeds and stubble by means of fire, and lets the fire spread and thus burns off another field, etc." Unquestionably this interpretation is possible and would not be at all far-fetched. But it must be admitted that this interpretation would hardly have been thought of had it not been for the verse immediately following.

[116] From Gen. 31.39 it may be inferred that it was a custom or *mišpaṭ* in ancient Israel that the shepherd should be held responsible for animals stolen from the flock during the day but not for those stolen during the night. This distinction between the degrees of responsibility for a theft committed by night or by day parallels somewhat in principle the same distinction implied in Ex. 22.1–2a.

[117] *ZAW*, I (1883), 122.

[118] Probably ובער should then also be emended to ובערה with הבערה as the subject.

Nay more, we have been able thus far to account readily and without any great stretch of the imagination, for the presence of every secondary *mišpaṭ* within this little code on the ground of some easily recognized point of relationship to the legislation which immediately precedes or follows, usually the latter. But if we interpret the *mišpaṭ* in v. 4 in the manner suggested by Hoffmann, then we must admit that not even by the widest stretch of the imagination can we account for the presence of the two *mišpaṭim* in vv. 4–5, dealing with the burning off of fields and vineyards, in the midst of a body of *mišpaṭim* dealing with the altogether unrelated theme of domestic animals. There would be absolutely no way in which to explain the attraction of these totally unrelated *mišpaṭim* to their present place, and their presence here would constitute an insoluble problem.

The very fact that these two *mišpaṭim* are found in the midst of this group of domestic animal *mišpaṭim*, and that the first of these two *mišpaṭim*, without the slightest textual emendation, can, literally interpreted, be understood to deal with an important and certainly not uncommon problem incidental to the keeping of domestic animals, viz. the degree of responsibility resting upon their owner if these animals break into the field or vineyard of another man and do damage there, suggests that this must be the actual meaning of this *mišpaṭ*. This conclusion is confirmed by a number of important considerations. The very fact that all the ancient versions, closest to the original text not only from the standpoint of literary composition but also from that of similarity of cultural background with that of the original text, have interpreted this verse in this manner suggests that their interpretation is in all likelihood the correct one.[119] Moreover, the expression *ba'er kerem*, used in Is. 3.14; 5.5; Sir. 36.30, refers only to the devastation of a vineyard by cattle and never by fire, while Sir. 6.2[120] gives a graphic description of the manner in which cattle consume the vines. And finally, interpreting 22.4 in the manner proposed by Hoffmann, it would seem that, despite a certain ambiguity in the language, the two *mišpaṭim* in vv. 4 and 5 would then deal with much the same case and thus duplicate each other in part in their conditions, but provide a somewhat differing penalty, and thus contradict each other in their conclusions. In the light of this evidence there can be little doubt that the *mišpaṭ* in v. 4 must be interpreted thus: If a man lets his cattle pasture in a field or vineyard and (through negligence) he allows them to escape and pasture in another field, belonging, of course, to another man, etc.

---

[119] This is the interpretation of Rashi and Ibn Ezra also.

[120] With a slightly emended text; cf. both Smend and Charles to the passage, and also Levy, *Neuhebräisches und chaldäisches Wörterbuch*, I, 247a, to בעי I.

Interpreted thus this *mišpaṭ* has at least a definite relation to the other *mišpaṭim* in the midst of which it occurs, even though it does not yet follow necessarily that it actually belongs to the group of primary *mišpaṭim* here. And interpreted thus, we can also understand how this *mišpaṭ* might easily have attracted to it, although, contrary to the customary editorial principle of RC, to a position following instead of preceding it, the *mišpaṭ* in v. 5, since that *mišpaṭ* deals also with the question of payment for damages caused in the field of B by the negligence of A. Regardless therefore of whatever conclusion we may come to with regard to the primary or secondary character of the *mišpaṭ* in v. 4, we must conclude that the *mišpaṭ* in v. 5 is secondary to it, that it has no connection whatever with the main body of animal *mišpaṭim*, and that its introduction into its present place is the work of RC.[121]

As scholars have long recognized, v. 4 seems to be incomplete in the form in which MT presents it. Sam. and LXX offer a fuller text, the thought of which seems more complete than that of MT, although in itself not without considerably ambiguity. This fuller text says: If a man lets his cattle pasture in a field or vineyard, and (through negligence) permits them to pasture in another field, he shall give in compensation, from his own field according to the crop of the (other) field; but if the cattle consume the entire field, then he shall give in compensation the best part of his own field or of his own vineyard. The general import of the *mišpaṭ* is clear, viz. that the owner of the cattle must compensate the owner of the second field or vineyard from the produce of his own field or vineyard proportionately to the damage which his cattle have wrought in the field or vineyard of his neighbor. However, just what is meant by כתבואתה, "according to its crop," of the emended text, is not certain. Perhaps it means that the characters of the two crops in the two fields or vineyards are to be compared and their relative values, and also the relative value of the damage wrought by the straying cattle, are to be determined and repayment made accordingly. Likewise the exact meaning of the phrase, "the best part of his field," is not clear, though various interpretations may easily be read into the phrase.

---

[121] It is interesting, and perhaps not without some significance, that in CHt, II, 5–7, the same two subjects are treated together, viz. damage to the field of B by a fire spreading from that of A, and damage to the field of B by A's cattle, but in the order the reverse of that of Ex. 22.4–5. Equally interesting and significant is the fact that in Palestine today, even among the semi-nomads of the Jordan Valley, to set fire to the field of another person, even accidentally, is a crime punishable by death; cf. Burckhardt, *Travels in Syria and the Holy Land*, 331; Thomson, *The Land and the Book*, II, 342. For the present-day peasant custom of burning off the fields after the harvest in order to promote fertility, paralleling the first half of this *mišpaṭ*, cf. Musil, *Arabia Petraea*, III, 16.

Understanding too that this *mišpaṭ* deals with a problem incidental to the keeping of domestic cattle, and that the *mišpaṭ* in v. 5 is undoubtedly secondary to it, we can now discuss intelligently the question of whether this *mišpaṭ* in v. 4 is itself primary or secondary in the main body of domestic animal *mišpaṭim* in which it occurs. The *mišpaṭ* immediately preceding it dealt with the question of the penalty for the theft of domestic cattle. We shall see that the *mišpaṭ* immediately following in the original body of domestic animal *mišpaṭim* is found in vv. 9–12. It deals with the responsibility of shepherds for the cattle entrusted to their care, in case the cattle die or are injured, carried off in a raid, stolen, or killed by wild animals. The transition from the *mišpaṭ* in 21.37+22.2b–3 to that in vv. 9–12 is perfectly logical and natural. The former deals with the theft of domestic animals while in the care of their master; the latter with the theft of domestic animals and other damages which might befall them while in the care of the shepherd to whom the owner has entrusted them. Between these two *mišpaṭim* the *mišpaṭ* in v. 4 seems to intrude, to disturb the natural continuity and to break the logical sequence of thought.

This is, however, it must be admitted, not quite as obvious and convincing as was the disturbing character of the secondary *mišpaṭ* in 21.33–34, inserted into the middle of a single *mišpaṭ*, instead of, as here, between two independent *mišpaṭim*. Moreover, viewed from one angle it may be possible to perceive a certain sequence of thought in the three *mišpaṭim* in 21.37 + 22. 2b–3; 4; and 9–12, in that they deal respectively with three different kinds of responsibility and damages resulting therefrom, all centering about the keeping of domestic animals, viz. the responsibility of a thief to the owner of the stolen animals, that of the owner of the animals to the owner of the field which they have damaged, and finally that of the shepherd to the owner of the animals entrusted to his care. Actually, however, this sequence of thought is not very real, since in the last of the three *mišpaṭim*, of the five cases of loss of animals set forth, the shepherd is held responsible and compelled to pay damages to the owner in only one of them.

On the whole therefore it seems most probable that the *mišpaṭ* in v. 4 is secondary here. It stood in all likelihood elsewhere in the original, ancient corpus of *mišpaṭim*, and was attracted to its present position in C by the superficial relationship of its subject matter to that of the *mišpaṭim* immediately preceding and following it in the original C code, viz. in that all three *mišpaṭim* dealt, as has been said, with the general problem of responsibility and damages incidental to the keeping of domestic animals. In all likelihood it was inserted by the same editor who inserted the *mišpaṭ* in 21.33–34 in its present place, since both are animal *mišpaṭim* and therefore directly related to the body of original *mišpaṭim* here. And, as has been shown already, this secondary *mišpaṭ* in 22.4 in turn attracted to its present place the further secondary, or even tertiary, if that term may be used, *mišpaṭ* in v. 5.[121a]

[121a] Further evidence of the secondary character of the *mišpaṭim* in vv. 4–5 may be seen in the fact that the *mišpaṭ* in vv. 6–7 deals with a special case of the same general crime which constitutes the theme of the *mišpaṭ* in 21.37+ 22.2b–3, and provides exactly the same penalty as is provided in v. 3. Un-

The group of *mišpaṭim* in vv. 6–12 are extremely interesting and bring to light facts of great significance for the reconstruction of the history of the religion and the judicial practice of ancient Israel. It is important to realize first that v. 8 is entirely independent either of the *mišpaṭ* which precedes it, in vv. 6–7 and of that which follows in vv. 9–12. A moment's thought shows that the *mišpaṭ* in vv. 6–7 is perfectly complete in itself and that v. 8 not only is not essential to it and adds nothing integral to its thought, but actually deals with an altogether different condition and likewise provides an altogether different procedure. The *mišpaṭ* in vv. 6–7 says, quite simply and with perfect clarity, that if A entrusts to B for safe-keeping either money[122] or vessels, i. e. mobilia, tangible property, and this is stolen from B's house, if the thief is apprehended he (i. e. the thief) shall repay twofold;[123] but if the thief is not apprehended, (and, by implication, there are no witnesses, so that the entire matter is one of the reliability of B's word,) then B shall come before the Deity and take oath that he has not stretched forth his hand against A's property. If B is willing to swear such an oath the case rests there and B is regarded as innocent and is freed from all responsibility towards A. Certainly this law is complete as it is and requires no further amplification.

Its full significance will become clear if we omit v. 8 for the present and proceed to the consideration of the *mišpaṭ* in vv. 9–12. This too says, quite simply and directly also, that if A entrusts to B for safe-keeping a domestic animal, either an ass, an ox or a sheep, and the animal dies or suffers a broken limb or some

doubtedly this indicates that at one time v. 6 must have followed immediately upon v. 3. And since, as we shall see shortly, the *mišpaṭ* in vv. 6–7 is itself secondary, it follows that the insertion of the *mišpaṭim* in vv. 4–5 was actually a tertiary process, a rather late step in the evolution of the *mišpaṭ* section of C.

[122] The readiness with which one Bedouin will entrust money for safekeeping to another with the confident expectation of having it returned in full even after several generations, is well illustrated by Doughty, *Arabia Deserta*, II, 301.

[123] I. e. exactly the same penalty as is provided in v. 3 for exactly the same offense. This little point of agreement may be regarded as evidencing the systematic organization and internal consistency of these *mišpaṭim*, and as additional proof that they were drawn from a common source.

similar injury, or is carried away in a raid, and there is no witness, then the oath of Yahwe shall be between the two men (to the effect) that B did not stretch forth his hand against A's property, whereupon A shall take his animal, and B shall not be responsible to him for any recompense. But if the animal is stolen, then B must make recompense to A. If the animal is killed by a wild beast, then B shall bring evidence thereof to A,[124] (literally, "a witness") in which case B need make no recompense.

It is clear that this *mišpaṭ* deals with the important question of the responsibility of a shepherd to his employer. The first part of the *mišpaṭ* deals with the three possibilities of the death or serious injury of the animal, or of its being carried away by a raiding party, without any witness being present to prove that the shepherd has been derelict in his duty and is therefore responsuble for damages to his employer. The underlying implication is that in all these three cases the shepherd is responsible to his employer if in any way he has been remiss in his care of the animals entrusted to him. Since, however, there is no witness, the word of the shepherd alone can determine whether he is responsible or not. Accordingly he is required to swear an oath in the name of Yahwe that he was not remiss in his duty.[125] The implication is, of course, that the oath here, as well as in v. 7, is of such a grave character that the shepherd would surely hesitate to swear falsely, for fear of the terrible consequences sure to befall him in case of perjury.

It is clear that the first two cases, viz. if the animal dies or breaks a limb, presume the direct negligence of the shepherd. Whether the animal dies as the result of some disease or of an accident, the presumption is that it was in good condition when committed to the shepherd's care, for otherwise, on the one hand, the owner would have kept it at home, and, on the other hand, the shepherd would have declined to receive it into his keeping and to accept responsibility for it. Obviously it is only to these two conditions that the provision in v. 10b applies, that the owner should take (his animal) i. e. either the injured animal or the carcass of the dead animal, for in the third case, viz. that the animal has been carried off by a raiding party, a *ghrazzu*, there would, of course, be nothing left for the owner to take.[126]

---

[124] Or, reading with LXX and Vul. עַד for עֵד, "then B shall bring A to the carcass"; the import is, of course, practically the same with either reading, viz. that the carcass itself, or at least a portion thereof, constitutes the proper evidence.

[125] Presumably this is what is meant by "if he did not stretch forth his hand against the property of his neighbor"; otherwise this phrase must refer specifically only to הנשבה, i. e. to cattle carried off in a *ghrazzu*; for presumably close examination of the carcass of the dead animal or of the wound of the injured animal would suffice to disclose the extent to which the shepherd was responsible in those two cases, and no further evidence would be needed.

The *mišpaṭ* then continues by providing that in case of an ordinary theft of an animal or animals the shepherd was naturally responsible, and must therefore make restitution to the owner. The difference between a raid and a theft was easily determined, for every raiding party, among Bedouin composed of members of a strange and hostile tribe, and among fellaheen, such as the Israelite peasants undoubtedly were, composed of members of some nomad tribe making a hurried inroad into the district for the purpose of carrying off booty, left behind it numerous traces of its presence and character. Therefore it was easy and natural to distinguish between the responsibility of the shepherd in case of a simple theft and in case of a raid.[127] In the former case he was fully responsible and had to make full restitution; in the latter case he had to swear by Yahwe that he was not responsible for the loss of the animals, and presumably that he was in no way a partner, through connivance, in the raid.

And finally, in case the animal was killed by a wild beast, a lion or bear for example, such as existed at one time in Palestine, and offered a constant danger to shepherds and their flocks, it was the shepherd's duty, of course, to protect his flock in every way possible.[128] But in case the beast did succeed in carrying away some animal, the shepherd was not held responsible, provided he could offer convincing testimony, either by bringing the owner of the animal to the place where the remains of the carcass were to be found, or, more probably, by bringing to the owner some part of the carcass.[129]

---

[126] Presumably because of this consideration, as well as because it is omitted in v. 13, Kittel (*Biblia Hebraica*, I, 106) would omit הנשבה. But the fact that LXX reads these words in v. 13 may just as well suggest that they should be retained here in v. 9 and likewise be inserted in MT to v. 13. Certainly in this enumeration of the various cases in which the shepherd's oath must satisfy the owner of the cattle it would be strange indeed were the particular case omitted of the animals being carried off in a raid, against which the shepherd would no doubt have been well-nigh powerless.

[127] Contrary to Jepsen, *op. cit.*, 39.

The meaning of this *mišpaṭ* is perfectly clear, as is its obvious parallelism with the *mišpaṭ* in vv. 6–7. Both *mišpaṭim* deal with parallel cases, the one with the entrusting of money or other property for safekeeping by A to B, the other with the entrusting of domestic animals. Both *mišpaṭim* too deal with the same conditions, viz. the procedure in case A's property disappears from B's custody, and there are no witnesses to determine the extent of B's responsibility in the matter. And both *mišpaṭim* agree in providing exactly the same procedure to meet this situation, viz. the oath in the name of the Deity by B that he was in no way responsible for the loss of A's property; and in both cases, manifestly in accordance with established procedure, the swearing of this oath suffices to settle the case and to free B from all obligation to A.

It would, however, be strange indeed to find a *mišpaṭ* such as that in vv. 6–7 in this body of animal *mišpaṭim*. The solution of the problem is simple. In the light of our investigation thus

[128] Cf. I Sam. 17.34f.; Ps. 23.4.

[129] Cf. Gen. 31.39. This verse implies that, just as in Ex. 22.11, if the shepherd could bring to the owner a part of the carcass of the animal slain by the wild beast, he was not held responsible. It then evidences Jacob's magnanimity in his dealings with Laban that he did not take advantage of this, but, with extreme generosity and sense of responsibility, he made every such loss good. Among the Haddedeen Arabs today, who regularly act as shepherds for the citizens of Mosul, if a sheep dies or is killed while in the shepherd's custody, the latter brings to the owner the ears of the sheep as proof and takes oath that they belong to the missing animal (Layard, *Niniveh and Its Remains*, I, 88, note). According to Canaan ("Studies in the Topography and Folklore of Petra," *JPOS*, IX [1929], 203), the practice among the Bedouin in the neighborhood of Petra is that if she-goats are entrusted to a poor Bedouin shepherd for a prescribed number of years (usually three), he may keep the wool, milk and male offspring for himself, but the females must be given back to the owner. However, if any die from natural causes, the owner may not demand payment or a substitute for it.

far we need not hesitate to conclude that the *mišpaṭ* in vv. 9–12 alone is original here, for it alone deals with a problem, or rather with a group of problems, incidental to the keeping of domestic animals; and furthermore, as we have seen, it is the logical continuation of the *mišpaṭ* in 21.37+22.2b–3. But recognizing that the *mišpaṭ* in vv. 9–12 is original here, we can also understand readily how this *mišpaṭ* would attract to a position immediately preceding it, because of the close relationship of the subject-matter of the two *mišpaṭim*, the *mišpaṭ* in vv. 6–7. Not improbably too this *mišpaṭ* originally stood elsewhere in the ancient corpus from which this body of animal *mišpaṭim* was extracted.

When we turn to v. 8 we find that it deals with an altogether different matter than either of these two *mišpaṭim* between which it comes. It is itself not couched in the form of a *mišpaṭ*, and ostensibly it seems to be the conclusion of the *mišpaṭ* in vv. 6–7, a generalization of its thought as it were, with extreme latitude of application. But, on the one hand, such a generalization of the thought of a *mišpaṭ* is strange indeed, for, as we have seen, the outstanding characteristic of these *mišpaṭim* is that they do not generalize at all, but that each deals with a specific case and fixes the judicial procedure for that one case alone. In the second place, we have seen that the *mišpaṭ* in vv. 6–7 is complete in itself and requires no generalization such as this nor amplification of any kind whatsoever. In the third place, v. 8 does not deal with exactly the same condition as does the *mišpaṭ* in vv. 6–7, for that deals only with the question of the theft of money or immobilia, for which there are no witnesses, from the custody of a man to whom they had been entrusted, while, even assuming that v. 8 is dealing in a general way with the same situation, it includes in its compass, and even seems to stress, the loss of domestic animals, and to mention such immobilia as garments only secondarily, while it makes no mention at all of money. And while it is true that, since v. 8 seems to be a generalization of the procedure described in vv. 6–7, and therefore there would be no logical reason why domestic animals should not be included in this generalization, it must be admitted that, were v. 8 original in this code of *mišpaṭim*, it would render the thought of vv. 9–10 tautological and therefore superfluous; and, as has been quite clearly established by this time, in the *mišpaṭim* which, we have concluded, are original in this code, there is, as is to be expected in a well organized law-code, no tautology and no superfluity. These considerations establish quite clearly that v. 8 is not original here, that it is an integral part of neither the primary *mišpaṭ* in vv. 9–12, nor yet of the secondary *mišpaṭ* in vv. 6–7. It is obviously editorial, the work of RC.

This conclusion receives absolute confirmation when we examine the content of v. 8 more minutely. It says this: In every case of questionable possession of property, claimed by two men, where it is clear that one of them must be claiming what is not his own,[130] whether that property be ox, ass, sheep, garment, or anything which has been lost,[131] (and, impliedly, there is no witness nor evidence of any kind to establish the correctness of the claim of one over against the other[132]), and the one[133] says that it is his, then the case shall be submitted to trial by ordeal, and whichever one the ordeal shall pronounce guilty shall make restitution to the other.

It is clear that the case in this verse is not at all the same as those in either the *mišpaṭ* in vv. 6–7 or in that in vv. 9–12.

---

[130] It is difficult to translate על כל אבדה literally, but it is clear from the context that this is what is implied.

[131] It is not clear whether אבדה merely sums up all that proceeds or whether it adds something new, i. e. whether אבדה designates something, an animal or other property, which had actually been lost and had then been found, and the ownership of which is claimed by the two men (cf. Lev. 5.22), while על כל דבר פשע refers, as the word פשע seems to imply, to things which had been stolen and the possession of which is claimed by the two men, of whom only one can, of course, be the rightful owner and the other must be the thief. However, in the light of the use of the very strong and seemingly significant word פשע, the latter explanation seems preferable. Apparently then the verse deals with two groups of articles, the possession of which has become a matter of dispute between two men in two different ways, either through theft or some similar illegal act, or through the article having been lost and subsequently found by some one, not its true owner, who, however, claims it as his own.

[132] Perhaps the story in I Ki. 3.16–27 might illustrate this case, at least in part, even though the judicial procedure employed by Solomon is different.

[133] I. e. of course, the one in whose possession the article is not at the moment of dispute.

Both those *mišpaṭim* deal with the question of the responsibility to the owner of the person to whom property of one kind or another is entrusted for safekeeping and which in one way or another is lost. But this verse deals with an altogether different question, viz. the procedure in case two men claim ownership of the same article, and one of them is necessarily acting deceitfully, but there is no evidence to indicate which one it is. Manifestly in this case it is difficult to decide between them. Lev. 5.22 seems to indicate that at least in the post-exilic period it was customary to require the finder in such case to take an oath that the property found belonged to him, and that the swearing of this oath sufficed to establish the property as his.[134] But certainly this is not the procedure prescribed in Ex. 22.8, for the verse clearly implies that both disputants participate equally in the ceremony or whatever the procedure was with which the verse deals. Of course it might be assumed that each disputant would be required to swear that the property found belonged to him. In such case the procedure would have been much the same as that described by Tabari[135] and quoted in detail by Pedersen.[136] But it was certainly quite exceptional that in that case the effects of swearing falsely manifested themselves immediately, so that it became possible to determine without delay which of the two disputants had foresworn himself. Ordinarily, even if both disputants were required to swear, it would not always become clear which one had sworn falsely, and least of all would it have become clear immediately. But this verse implies that as the result of the procedure prescribed here it can be determined immediately and infallibly, a divine decision in other words, which of the two disputants is the rightful owner and which the false claimant.

In the light of these considerations only one conclusion is possible; v. 8 prescribes, or at least presumes, that the case in question is to be settled, not by either or both parties taking oath, but by recourse to trial by ordeal.[137] Elsewhere I have treated in detail the subject of trial by ordeal among the Semites in general and in ancient Israel in particular, and need not repeat here what has already been presented there.[138] Suffice it to say that the institution of trial by ordeal was well established in ancient Israel. It was an institution well adapted to a case such as this, where the words of two witnesses contradicted each other and where all evidence was lacking which would determine which was true and which false; and, of course, the decision of the ordeal would be immediate and absolute. Just this seems to be the exact implication of the words עד האלהים יבא דבר שניהם.[139]

---

[134] Lev. 5.22 shows likewise that by the post-exilic period the oath, even in the name of Yahwe, had lost much of its original force, and that people did not hesitate to swear falsely, at least to certain oaths. Such a condition is, of course, not contemplated in Ex. 22.10.

[135] III, 616ff.

[136] *Der Eid bei den Semiten*, 137–139.

But recognizing that the procedure prescribed or presumed here is that of trial by ordeal, it becomes quite certain that v. 8 deals with a condition altogether different than that dealt with either in the *mišpaṭ* in vv. 6–7 or in that in vv. 9–12. It follows therefore necessarily that v. 8 here, even though it does undoubtedly record an ancient and well-established practice, is not original here, but has been introduced by RC; or, since it is obviously secondary to the *mišpaṭ* in vv. 6–7, and, as we have seen, that is itself secondary, then by RC2. It serves, moreover, as a connecting link between the *mišpaṭ* in vv. 6–7 and that in vv. 9–12 since it deals with the question of the rightful ownership of lost property, whether that property consisted of immobilia, as in vv. 6–7, or of domestic animals, as in vv. 9–12.[140] It should be noted too that v. 8 interprets the act of claiming falsely property which had been lost and then found as tantamount to an act of theft in which the stolen property is recovered. Accordingly just as in vv. 3 and 6, it provides that the person convicted by the process of trial by ordeal shall pay to his opponent twice the value of the property in dispute. This consistency may perhaps indicate that v. 8, or at least its *mišpaṭ* antecedent, couched no doubt in regular *mišpaṭ* form, stood originally in the old *mišpaṭ*-corpus, the common source of most, if not all, of the *mišpaṭim* in C.

---

[137] So also Jepsen, *op. cit.*, 38, 67.

[138] "Trial by Ordeal among the Semites and in Ancient Israel," *Hebrew Union College Jubilee Volume* (1925), 111–143.

[139] The reading of Sam., אשר ירשיעָנו האלהים, seems somewhat preferable to that of MT, because of the corresponding reading האלהים in v. 8a.

[140] Jepsen, (*op. cit.*, 39, cf. also p. 67) would transpose v. 8 to a position following immediately upon v. 12. His grounds for this rather violent transposition are not at all convincing; and the considerations which we have offered establish rather conclusively that v. 8 is in its proper and logical place just where it is.

Accordingly we must conclude that in this body of legislation in vv. 6–12 only the *mišpaṭ* in vv. 9–12 is original, and constituted the natural and immediate continuation of the *mišpaṭ* in 21.37+22.2b–3; that the *mišpaṭ* in vv. 6–7 was then introduced into its present position, or rather into a position immediately preceding the original *mišpaṭ* in vv. 9–12, attracted thither by its very obvious parallelism in thought with that *mišpaṭ*; and that finally v. 8 was inserted between these two *mišpaṭim* by secondary Book of the Covenant editors, likewise attracted thither by a certain, though not quite as direct and immediate, relationship with the two *mišpaṭim* between which it crept.[141]

---

[141] It is difficult to explain why v. 7 should employ האלהים for the deity when v. 10 employs יהוה, and designates the oath in the name of Yahwe as שבעת יהוה. It may well be that in ancient Israel the expression עד האלהים יבא הדבר (cf. v. 8) was the customary expression for submission to trial by ordeal. There is good reason to believe that trial by ordeal was in origin not related to the Yahwe-cult in any way; at any rate the outstanding case of trial by ordeal in ancient Israel, that of the woman suspected of adultery (Num. 5), was originally not a part of the Yahwe-cult. It was instead a survival of an older, pre-Yahwistic ceremony or a magical rite which persisted in the folk-practice of Israel until into the post-exilic period, and was then, though undoubtedly only half willingly, given by the priestly authorities a Yahwe-coloring and sanction by the association with the ordeal procedure itself of a sin-offering sacrificed to Yahwe and by the localization of the rite in the sanctuary and under the ministration of the priest of Yahwe (cf. my "Trial by Ordeal among the Semites and in Ancient Israel," *Hebrew Union College Jubilee Volume* [1925] 127–143). In its present form the procedure in Num. 5.11–31 combines the processes of both oath and trial by ordeal. But it requires only brief consideration to realize that the references to the oath in vv. 19 and 21 are editorial insertions, along with the prescriptions for the sin-offering. VV. 17–22 must have read originally, (17) ולקח (הכהן) מים קדשים בכלי חרש ומן העפר . . . . . ונתן אל המים: (18) ופרע [הכהן] את ראש האשה: (19) ואמר אל האשה אם לא שכב איש אתך ואם לא שטית טמאה תחת אישך הנקי מן המים המאררים האלה: (20) ואת כי שטית תחת אישך וכי נטמאת ויתן איש בך את שכבתו מבלעדי אישך: (22) ובאו המים המאררים האלה במעיך לצבת בטן ולנפל ירך ואמרה האשה אמן אמן. These words give a clear

It is clear too, as has been said already, that the *mišpaṭ* in vv. 13–14 is the natural and immediate continuation of the *mišpaṭ* in vv. 9–12, and is the last of the domestic animal *mišpaṭim*. Just as the *mišpaṭ* in vv. 9–12 deals with the question of the responsibility of B to A when the animals of the latter, entrusted to his care, are injured or stolen, so this *mišpaṭ* in vv. 13–14 deals with the closely related question of the responsibility of B to A when the animal of the latter, borrowed or hired by B, is injured or killed while in B's care. The *mišpaṭ* provides that if B borrows an animal from A and it suffers a broken limb or is

picture of the customary formula which must have been recited by officiant and accused in trial by ordeal in ancient Israel. But if it be granted that originally, and in fact throughout the entire pre-exilic period, trial by ordeal was at the best only loosely connected with the Yahwe-cult, then we can understand why in what seems to have been the customary designation for submission to trial by ordeal the deity should have been designated as האלהים rather than as Yahwe. And it is by no means impossible that האלהים in v. 7 may be an editorial substitution for an original יהוה, the result of the influence of האלהים in v. 8.

Or is it possible that v. 7 too contemplates, not an oath by the person to whom the property had been entrusted for safe-keeping, but recourse to trial by ordeal? Actually MT does not specify the oath, and the language employed might just as well be understood to prescribe trial by ordeal as recourse to the oath. In fact, if we grant that עד האלהים יבא דבר שניהם in v. 8 means recourse to trial by ordeal, then we could easily interpret ונקרב בעל הבית אל האלהים in v. 7 in the same manner; in fact we could do so just as well as, if not even more readily than to interpret it as meaning recourse to the oath.

None the less it would be just a bit strange to interpret it in this manner. On the one hand, both LXX and Vul. actually insert ונשבע into the text of v. 7 after האלהים and all the versions and commentators seem to have interpreted the verse in this manner. And on the other hand, the occasion seems hardly to have been extreme enough to have required trial by ordeal instead of the more simple oath.

Among the present-day Bedouin trial by ordeal is as a rule resorted to only when the case seems extreme and the oath alone does not suffice (cf. Musil, *op. cit.*, III, 337ff.). Ordinarily, the oath is sufficient, and even for quite extreme cases oaths of more than ordinary force are frequently resorted to, such as the responsible and perturbing oath, *šimle we nimle* (cf. Burckhardt, *Notes on the Bedouins and Wahábys*, 72ff.; Musil, *op. cit.*, III, 338f.; Jaussen, *op. cit.*, 188f.). The oath is regularly employed in cases of theft of animals or other property and not infrequently also in cases of rape or murder, where there is no direct evidence, but only suspicion of guilt; while the ordeal is resorted to, as a rule, killed,[142] if its owner A is not with it (assisting in the work for which it has been borrowed), then B must make restitution to A; but if the owner is with the animal, no restitution need be

---

only in cases of rape, adultery or murder, when all direct evidence is lacking and the circumstances are unusually shocking. In addition to the above-cited references cf. also for the general subject of oaths employed by modern Semites in cases similar to those set forth in vv. 6–7 and 9–12, Featherman, *The Aramaeans*, 386f.; Kennett, *Bedouin Justice*, 40ff.; Meissner, *Neuarabische Geschichten aus dem Iraq*, II, Nos. L and LI; Westermarck, *The Moorish Conception of Holiness* (*Baraka*), 106, 114f.; Haddad, "Blood Revenge among the Arabs," *JPOS*, I [1921], 110f., [also *ZDPV*, 40 (1917), 233]; "Methods of Education and Correction among the Fellāḥîn," *JPOS*, III [1923], 42; El-Barghuthi, "Judicial Courts among the Bedouin of Palestine," *JPOS*, II [1922], 51; Canaan, "Mohammedan Saints and Sanctuaries in Palestine," *JPOS*, VI [1926], 1–6; VII [1927], 37; Klippel, *Études sur le Folklore Bedouin de l'Égypte*, 27.) For the use of the oath in HC, cf. Price, "The Oath in Early Babylonia and the Old Testament," *JAOS*, 49 (1929), 22–29. The same procedure seems to have been followed in general in the ancient codes (cf. CH §§2 and 132; CA §§17, 22, 24 and 25). Likewise the Aramaic papyri from Elephantine record a case where Mahseiah b. Yedoniah must swear an oath by Yahu that a certain piece of land does not belong to Dargman (Sayce and Cowley, *Aramaic Papyri Discovered at Assuan*, B, 5–7), and another case in which, although in a Jewish court, an oath is sworn by Sati, an Egyptian goddess (*ibid*, F, 5). Inasmuch as the *mišpaṭ* in vv. 6–7 deals only with the theft of immobilia, the normal procedure here would have been, judged by these standards, recourse to the oath, rather than to trial by ordeal. At the same time it must be admitted that, even though less probable, none the less the possibility is not excluded that vv. 6–7 did actually prescribe trial by ordeal in the case in hand; and in such case the use of האלהים here would be perfectly comprehensible.

[142] LXX adds או נשבה after מת. Jepsen (*op. cit.*, 39, note 5) approves this reading for MT. However, it is clear that מת, not only here but also in v. 9, implies that the animal is killed through an accident while in B's care, rather than that it dies from an illness, from which it may have suffered before coming into B's charge. Certainly the implication in both verses is that the misfortune befalls the animal through B's negligence (in vv. 13–14, of course only if the owner of the animal is not with it); therefore B's responsibility in the matter. But in case of the animal being carried off by a *ghrazzu* B could scarcely be held responsible, for the case here is in this respect not at all comparable with that in v. 9; accordingly there would be no justification for the או נשבה of LXX. It seems better therefore to abide by the reading of MT, and to regard the addition of LXX as harmonistic, the result of the influence of the reading in v. 9.

made. If the animal has been hired,[143] then the matter is taken care of in the wages, i. e. seemingly no further restitution need be made, since the matter is a pure business transaction, and the owner, A, must take the chance and bear the burden of injury to his animal when he hires it out.

---

[143] The meaning of שכיר is somewhat uncertain. Ordinarily the word means, both in fact as well as etymologically, "a hired man." It is doubtful whether it is ever used elsewhere in the Bible as a passive participle (unless it be in Is. 7.20; but cf. Jepsen, *op. cit.*, 40, note 2, to this passage). In fact the use of *qăṭīl* nouns as verbal passive participles, while by no means uninstanced, is none the less rare (cf. Barth, *Die Nominalbildung in den semitischen Sprachen*, 186c). But to translate שכיר here as "a hired man" is impossible. For, if שכיר were interpreted as referring to the owner of the borrowed animal, the passage would then mean that if B borrows A's animal and at the same time hires A to work for him, and, of course, in the discharge of the work, naturally to use his own animal, etc. But if this were the meaning, then this case would be fully covered by the provision in v. 14a, viz. that if the owner of the animal is with it, then no restitution need be made, and there would be no occasion to add the provision in v. 14b. Accordingly Jepsen (*op. cit.*, 40f.) would interpret שכיר as referring not to the lender but to the borrower, and holds that v. 14b means, "if a hired man borrows an animal from his employer, and it is injured or killed while in his care, restitution for it shall be made out of his wages." But this seems far-fetched indeed; actually this case is covered fully in v. 13, for the *mišpaṭ* is concerned only with the case itself and the penalty to be fixed, and not at all with the manner in which the restitution should be made; for in the latter case it would have to consider not only how the hired man, but also the poor man and others in like condition, should make restitution.

There seems no alternative but to regard שכיר here as one of those rare instances in which a *qăṭīl* noun is used as a verbal passive participle, and to interpret it as referring to the animal. And actually the context implies just this; and likewise the *mišpaṭ* would be incomplete did it not deal with the case of misfortune befalling an animal which was, not borrowed, but hired. This too is the interpretation of Rashi (so also Menes, *op. cit.*, 31). And the correctness of this interpretation receives some slight confirmation from the fact that both CH §§244–249 and CHt § 76 deal with this very problem of the responsibility of B for injuries befalling the animal of A which he has hired; in other words this legislation shows that this was a situation which arose among an agricultural people not infrequently, and for the proper regulation of which some such law as this was indispensable. It seems quite plain therefore, that the *mišpaṭ* in vv. 13–14 deals with the three cases of (a) an animal borrowed and the owner not with it, (b) an animal borrowed and the owner with it, and (c) an animal hired. These three cases, it is clear, supplement

The meaning of this *mišpaṭ* is simple and obvious. It is clear that its background is that of Israel seemingly in a rather early stage of agricultural development, when cooperative enterprise was still the rule. The *mišpaṭ* envisages the condition when two farmers would assist each other in their tasks by the loan of their animals and likewise even, and that seemingly not infrequently, by the exchange of their own personal services. It deals also with the case where the one hires the animal of the other. It holds that if A, the owner of the borrowed animal, is present, of course assisting B with his work, then it is A's responsibility to look out for the well-being of his animal, and therefore in case of injury to it no responsibility rests upon B. Only in case the owner is not with the animal does B, the borrower, naturally become responsible. But if the animal is hired and not borrowed, then the owner must bear whatever chance befalls it, since he has expected compensation for the use of his animal, and presumably with the expectation of profit must go likewise the responsibility for loss.

The last *mišpaṭ* in C is found in vv. 15–16. It is a simple *mišpaṭ* indeed and its meaning is quite obvious. It provides that if a man seduces a virgin, not yet betrothed, he must pay for her the regular price of brides and thus acquire her as his wife. But if her father refuses to give her to him, he must nevertheless pay the father in silver the regular price of virgins. It is clear that the only question involved here is that of compensation for damages to property. The seduced maiden has lost much of her original value;[143a] but it is her father who is thought to suffer the loss, and therefore, of course, the payment is to him. Moreover, since the father has the option to give the maiden to her seducer or to keep her at home, presumably for some later bridegroom who may purchase her for a considerably reduced sum, the implication is that the gain to be derived from the disposal of her hand to such a possible suitor would do little more than compensate

---

the general case dealt with in the *mišpaṭ* in vv. 9–12, an animal entrusted by its owner to another person for safe-keeping.

[143a] In this connection it is interesting to note that at Birk, in Asir, widows today cost a half sovereign and virgins eight times as much; Rutter, *The Holy Cities of Arabia*, I, 57.

the father for the expense which would be incurred by him in maintaining her at home until she might be disposed of. Moreover, since the seducer must pay for her in silver instead of with cattle or other property, it follows that this *mišpaṭ* comes from a period when money transactions must have become well established.

This *mišpaṭ* is by no means a duplicate of that in Deut. 22.28–29, as is occasionally assumed, but is rather the complement to it.[143b] That *mišpaṭ* deals with the case of the virgin, not yet betrothed, who is not seduced, but is violated by force, in other words a case of rape. It goes on to specify, however, that the couple must be caught in the act, in which case the penalty imposed upon the man is that he must pay the father of the maiden fifty shekels, and the maiden becomes his wife, with the added condition that he may never divorce her, because of his mistreatment of her.[143c] It is noteworthy that here, unlike in the parallel *mišpaṭ* in Ex. 22.15–16, the father seemingly has not the right to refuse to give the maiden to her betrayer. The reason for this is probably in order to protect the maiden and secure for her a permanent position as a wife, with the provision for her life-long sustenance and marital privilege which this would carry with it. Apparently inasmuch as the maiden was entirely blameless in this case, contrary to that in Ex. 22.15–16, where the consent of the maiden is implied in the word יפתה, it was felt necessary to provide proper permanent protection for the maiden who had been raped. It is quite clear too just why the *mišpaṭ* in Deut. 22.28–29 provides that the couple must be discovered in the act in order for the penalty specified to become applicable. The obvious assumption is that they are discovered in the act because the maiden has cried out for help, precisely as is specified in the *mišpaṭ* immediately preceding, in Deut. 22.23–26. The cry of the maiden for help, of course, so it is presumed, brings aid, and likewise establishes the fact that the act was committed without her consent, i. e. that it was a case of rape; and of this the persons who answered her call are the witnesses. The further implication seems to be that if the maiden did not cry out for help, or if no cry was heard, then it was a case of consent upon her part, of seduction in other words. It is quite clear that the *mišpaṭ* in Ex. 22.15–16 is the complement of that in Deut. 22.28–29, and that each is incomplete and not fully explicable without the other."[144]

[143b] So also Menes, *op. cit.*, 122.

[143c] Much the same practices obtain in Nablous today: cf. Jaussen, *Naplouse*, 123f.

This conclusion is borne out by one other consideration. Both of these *mišpaṭim* deal specifically with the case of the virgin who is not betrothed. This would be perfectly comprehensible if these two *mišpaṭim* stood by themselves without proximity to or relation with any other *mišpaṭim*; but this specification becomes doubly significant when we realize that the *mišpaṭ* in Deut. 22. 23–26 deals with the parallel case of the virgin who is betrothed, and deals with this case likewise under two heads, the case of the betrothed virgin who is raped, and that of the betrothed virgin who is seduced. Obviously these two pairs of *mišpaṭim* parallel each other exactly; and this parallelism becomes all the more real and significant when we call to mind that the full meaning of ונמצאו in Deut. 22.28 becomes clear only when interpreted in the light of vv. 25–27.

It is impossible to avoid the conclusion that these four *mišpaṭim* belong together, constitute a close, inseparable unit of legislation, and that they must have stood in immediate juxtaposition to each other, not only in the original corpus of *mišpaṭim* from which they were extracted, but also, in the light of the somewhat incomplete and fragmentary character of the *mišpaṭ* in Ex. 22.15–16 when standing by itself, as it does now, originally even in the Biblical legislation. We must assume either that Ex. 22.15–16 is out of place, that it stood originally at the end of Deut. 22, following immediately upon the present v. 29, and then, for some strange, incomprehensible reason, was transposed to its present position, or else that Deut. 22.28–29 stood originally in C, immediately before Ex. 22.15,[145] and then, for some equally strange and incomprehensible reason, was transferred to its present place with, however, the concluding *mišpaṭ* of the group separated from the remainder of the section and left standing in Ex. 22.15–16.

---

[144] So also Jirku, *Das weltliche Recht im Alten Testament*, 49f.

[145] This might well be the implication also of וכי instead of merely כי introducing this *mišpaṭ*. It seems to imply that this *mišpaṭ* offers an alternative to some other parallel *mišpaṭ* which originally immediately preceded this. Deut. 22.28–29 would conform to this condition exactly; cf. Jepsen, *op. cit.* 56.

Actually it is not easy to decide between these two hypotheses. It is by no means impossible, nor even improbable, that C once contained a body of *mišpaṭim* considerably larger than what we now find there. On the one hand, as we have seen, the original *mišpaṭim* nucleus of C, so far as it has been preserved to us, consisted of only two sections of laws, a group of three primary *mišpaṭim*, recording the legal conditions under which a Hebrew slave gained his or her freedom, and a group of four *mišpaṭim* dealing with the keeping of domestic animals. Neither of these two groups of *mišpaṭim* seems to be of such basic significance in the life of the people as to account for the presence of only these two *mišpaṭim* groups in C, and the complete absence of all other *mišpaṭim*, some of which might well deal with legal conditions and problems of much greater importance. It is difficult indeed, if not impossible, to account for the presence of these two sections alone and the seemingly total exclusion of all others in the original *mišpaṭ*-code of C. The hypothesis is exceedingly attractive that other *mišpaṭim*, and even groups of *mišpaṭim*, may once have stood here in C, and through editorial processes have been transferred to other passages of the Bible, or, not impossibly, even to some other writings not contained in the Bible, and therefore are now lost.

Moreover, the very introduction to this *mišpaṭim* section of C, in Ex. 21.1, "These are the *mišpaṭim* which thou shalt put before them," seems to imply a fairly extensive body of laws, presumably more extensive than merely the two sections of *mišpaṭim* which, we have seen, are primary in the present *mišpaṭ*-code of C. True, this introductory and obviously editorial statement may, and probably does refer to the complete and editorially amplified body of *mišpaṭim* which we now have in C, is therefore, in other words, the work of RC. But even at the best this is not a very extensive body of *mišpaṭim*, and the introductory statement may well have implied a considerably larger group.

The hypothesis that C may once have contained a body of *mišpaṭim*, probably well organized in sections, each section dealing with a single, central theme, merits careful consideration. And in such case we would conclude without hesitation that not merely Deut. 22.23–29, but rather Deut. 22.13–29, and perhaps also 24.1–4; 25.5–10, in their original wordings, all constituting together, as we shall see, a closely related, logically organized group of *mišpaṭim* dealing with the central theme of marriage relations, and all, moreover, animated by one basic consideration, viz. the protection of the woman against certain workings of established marriage institutions and conventions which might otherwise result to her disadvantage, stood originally in C, in direct association with Ex. 22.15–16, and following immediately upon the section of *mišpaṭim* dealing with the keeping of domestic animals. Nor would it be overly difficult, as we shall see, to account for the transfer of this section of *mišpaṭim* from their original position in C to their present position in Deuteronomy. The only real difficulty would be to account for the separation of the *mišpaṭ* in Ex. 22.15–16 from the remainder of the body of marriage *mišpaṭim* and its retention alone in its original place in C.

On the other hand, the opposite alternative, viz. that Ex. 22.15–16 stood originally in Deuteronomy immediately after 22.29, is equally possible and, as we shall see, is for very positive and cogent reasons even more probable.[146]

However, it is quite clear that before a final decision upon this question, of such importance for the correct literary history of the Book of the Covenant, can be reached, it is necessary to make a careful study of the *mišpaṭim* in other sections of the Bible and to attempt to determine their source and their mutual relationship. It follows too that this investigation will in all likelihood cast considerable light upon the hypothesis which we have proposed, that there was originally in Israel in the pre-Deuteronomic period a well-organized corpus of *mišpaṭim*, or perhaps even more than one such corpus, from which most, if not all, of the *mišpaṭim* preserved in the Bible were drawn. We proceed therefore to a study of the Biblical *mišpaṭim* other than those in C.

---

[146] A third hypothesis is theoretically possible, but so contrary to probability and logic that it merits citation only for the sake of completeness. It is that this section of marriage-*mišpaṭim* may have stood in its original unified form only in the original *mišpaṭ*-corpus which, we have suggested, constituted the source of the older Biblical *mišpaṭim*, and that from that source the compilers or editors of C drew only the single *mišpaṭ* in Ex. 22.15–16, while the Deuteronomic editors, writing some time later, drew the remainder of the section. This hypothesis would offer no explanation of why the C writers should have borrowed only this one single *mišpaṭ*, the full meaning of which by itself is not altogether appreciable, and should have omitted the remainder of the section. Nor would it explain why the Deuteronomic editors in turn should have borrowed the remainder of the section and have omitted just this one, concluding *mišpaṭ*. This hypothesis may accordingly be dismissed from further consideration.

III. Biblical *Mišpaṭim* Other Than Those in the Book of the Covenant

Outside of the Book of the Covenant true *mišpaṭim* are found in the Bible only in Deuteronomy.[147] What might perhaps be called *mišpaṭim*, and in fact have much in common with *mišpaṭim*, are found frequently in the Priestly Code, but, as has been noted already,[148] with a form differing somewhat from that which, we have learned, seems to have been characteristic of the older *mišpaṭim*, and with a content and likewise an obvious source of authority altogether different than that of the older *mišpaṭim*. As regards the form, the *mišpaṭim* of P are characterized by the fact that, with but one single exception, in Lev. 25.26, the subject of the verb in the protasis of the condition, usually נפש or איש, or, quite frequently and characteristically איש איש,[149] precedes the verb instead of following it, as in the older *mišpaṭim*. Moreover, נפש or איש is occasionally followed by אשר instead of כי with, however, no difference whatever in meaning. Furthermore, there is occasional confusion, and apparently no definite rule, as there was with the older *mišpaṭim*, in the use of both כי and אם, to introduce subordinate conditions within the *mišpaṭ*, as for example in Lev. 25.25–28. Here and there too, as in Num. 19.11, 13, the protasis of the condition of the *mišpaṭ* is expressed in the form of a participle, in almost the same manner as in the *ḥoq*, quite as if there was a tendency to develop naturally from the *mišpaṭ*-form to the *ḥoq*-form. Furthermore, in these Priestly *mišpaṭim* the second person is used regularly in the apodosis, and not infrequently even in the protasis of the condition of the *mišpaṭ*, where the older *mišpaṭim*, as we have seen, regularly use only the third person. From the point of view of form the *mišpaṭim* of the Priestly Code are immediately recognizable.

---

[147] Except Lev. 19.20, discussed in detail above, pp. 44–47.

[148] Above, p. 44.

[149] The duplication has, of course, distributive force. Cf. also Lev. 22.11–13, where instead of איש we have, quite naturally, כהן and בת כהן. Altogether mistakenly Jirku, in his most recent work, *Das weltliche Recht im Alten Testament* (1927), pp. 39, 42, holds that laws introduced by איש אשר and איש איש כי constitute two independent types of law which differ essentially, not only in form, but also to a considerable extent in content, from the old, characteristic *mišpaṭ*.

And as regards content and source of authority, the Priestly *mišpaṭim* deal in the main with ritual or semi-ritual matters, under the immediate supervision of the priests. And even in those cases where civil matters are dealt with, as in Num. 27.8–11, it is, as we shall see more clearly later, when we come to consider the nature and origin of the *ḥoq*, in every case a priestly decision based primarily upon a consultation, or perhaps a pseudo-consultation, of the oracle. This is in decided contrast to the older *mišpaṭim*, which deal only with civil matters and where the chief source of authority is obviously the decision of some high and responsible judicial authority, such as the king or the court, and where the decision is based primarily upon established custom and fundamental principles of justice.

Moreover, it is noteworthy that, despite the obvious, even though modified, and perhaps even degenerate, form of the Priestly *mišpaṭim*, there is considerable and confusing variation in the technical designation of these laws. The Torah-section of the Priestly Code (Pt) regularly designates its laws as *torot*, even though practically all of them are couched in the Priestly *mišpaṭ* form. And singularly enough, Num. 19.10 designates as a *ḥuqqah* that same law or group of laws in the *mišpaṭ* form, which in v. 14 it calls a *torah*, and which in v. 2 it calls by the composite term *ḥuqqat torah*. Equally strange is the fact that Num. 30.17 designates as *ḥuqqim* a body of laws of ritualistic character, found in vv. 3–16, all of which are couched in the characteristic Priestly *mišpaṭ* form. And perhaps most significant of all, Num. 27.11

designates as *ḥuqqat mišpaṭ* a small body of laws, contained in vv. 8–11, which deal with the obviously civil question of inheritance by women, and are couched likewise in *mišpaṭ* form.

From this it may perhaps be inferred that by the time of the composition of the Priestly Code in the post-exilic period, not only had the character of the older *mišpaṭim* been modified considerably, both as to form and content, but also much confusion had arisen in the use, with technical precision, of the various terms for law, and particularly of the terms *mišpaṭ*, *ḥoq* and *ḥuqqah*, and *torah*, and that to a certain extent they had come to be used interchangably or in strange and illogical combinations with each other.

We can easily understand how such confusion may have arisen. It must have been due to the cessation of the kingship, and therefore also of the judicial authority of the king and of the royal courts, in the post-exilic period, and the consequent concentration of all authority, legal as well as ritual, in the hands of the priests. Deut. 17.8–12 gives a convincing illustration of the manner in which the priest came to supplant the judge as the expositor of the law even in civil cases, and likewise of the way in which, under this priestly influence, the term *torah* came to supersede the older term *mišpaṭ*, particularly with reference to civil law, during the early post-exilic period.[150] Now, with but one source of legal decision, viz. the priests, for all matters, whether of a civil or a ritual nature, it was inevitable, on the one hand, that the various, originally distinctive types of law should tend to coalesce and find expression in one or two common forms, and, on the other hand, that confusion should arise in the exact connotation of the various technical terms for law, and that to a considerable extent they should have come to be used interchangably. This is the state of evolution of the laws which we find in the Priestly Code. It is not surprising therefore that, with the single exception of Lev. 19.20, we find not a single old *mišpaṭ* in P.[151]

---

[150] Cf. also Deut. 21.5 and 8, see also below p. 132.

[151] And even this is couched in characteristic Priestly form; cf. ואיש כי as the introduction, and also the addition in vv. 21–22 of the rite of purification.

The beginnings of the development of this confusion in both the form and terminology of laws, the culmination of which is manifest in the Priestly Code, may be found in Deuteronomy. There too, and particularly in the late and obviously post-exilic strata, there is extreme confusion in the use of the various terms, *dabar*, *mišpaṭ*, *ḥoq* and *ḥuqqah*, *miṣwah*, *torah*, and *ʿedah* or *ʿedut*, and these various terms seem to be used interchangably to a great extent.[152] Into this matter we need not go further at this time. Of far greater significance for our study is the fact that even in the older strata of Deuteronomy, coming therefore from the late pre-exilic period,[153] we begin to discern a modification of the old *mišpaṭ* form in the frequent use of the second person, and both singular and plural, where the older *mišpaṭim* employed only the third person, and likewise in the extension of the *mišpaṭ* form away from purely civil matters, to other types of legislation, as for example in 12.20ff.; 19.1–7; 20.1–9; 10–18; 19–20, and even to purely hortatory utterance, as in 4.25ff.; 7.1ff. Such *mišpaṭim*, in so far as they are actually *mišpaṭim*, and such a style in hortatory passages are characteristically Deuteronomic.

But in significant contrast to these passages we find in Deuteronomy a considerable number of *mišpaṭim* which conform quite closely to the characteristic form and spirit of the older *mišpaṭim*. These latter demand our careful and detailed investigation, and all the more so because we have already had some evidence of a direct and positive relationship between some of them and some of the *mišpaṭim* in C. Not impossibly through their careful and detailed analysis additional light may be shed upon the problem of the origin and early history of these *mišpaṭim*.

---

[152] To what extent these varying terms for law may be used as keys to the analysis of Deuteronomy into its various literary strata, is questionable. Experiments show the results to be precarious. Probably we must await the opportunity to make this analysis of Deuteronomy upon some other basis and from some other point of approach, and then only after fairly definite and well-established conclusions with regard to the literary stratification of Deuteronomy have been reached, investigate the use and the exact connotation of these various terms for law in the different strata of the book.

[153] As we must still hold, regardless of the various and widely differing hypotheses as to the literary history, unity and date of Deuteronomy, which have been advanced in recent years.

However, before we approach the analysis of this last group of *mišpaṭim*, it will be well to consider, as briefly as possible, a number of *mišpaṭim* which are obviously of characteristically Deuteronomic origin, in order that we may thereby distinguish more readily between these younger, Deuteronomic and the older and therefore presumably borrowed *mišpaṭim*. Deut. 15.12–18 offers an excellent starting-point for this task. It is the Deuteronomic parallel of the C *mišpaṭ* in Ex. 21.2–6, or rather it is the Deuteronomic restatement of that *mišpaṭ*. Leaving out of consideration here the differences in content of these two *mišpaṭim*, viz. the inclusion of the female Hebrew slave in the right of manumission in the seventh year, the significant omission in the Deuteronomic *mišpaṭ* of והגישו אל האלהים of Ex. 21.6, and the new provision in the Deuteronomic *mišpaṭ* that in addition to the manumission of the Hebrew slave, both male and female, a gift must be presented to him by the master at the same time, presumably in order to enable him to resume his independent economic life with some fair prospect of success and of freedom from the danger of having to again, in the near future, sell himself into slavery, and also the extension to the female slave of the rite of boring the ear, something which apparently Ex. 2–11 did not contemplate, we note a number of obvious Deuteronomic characteristics in the form of the *mišpaṭ*. The prolixity of this Deuteronomic *mišpaṭ* is striking, even when we omit vv. 14b, 15 and 18, and perhaps also 16b, as the hortatory amplifications of late Deuteronomic editors. However, what still remains, practically every word of which is essential to the thought and must therefore be original, makes the decided impression of verbosity when compared with the direct and concise manner of expression of the older *mišpaṭim*. We note further the use of the second person singular throughout, and likewise that the subordinate condition in v. 13 begins with וכי while that in v. 16 begins with והיה כי.[154] This is in striking contrast to the regular introduction of subordinate conditions by אם or ואם in the older *mišpaṭim*.

---

[154] The introduction of subordinate conditions within the *mišpaṭ* by והיה כי (cf. also Ex. 22.26) or, far more commonly, והיה אם (cf. Deut. 20.11; 21.14; 24.1; 25.2), the latter frequently, though not invariably in the sense, "and then if," seems to be characteristic of Yahwistic and Deuteronomic writing; cf. Deut. 8.19; 11.13; 28.1, 15; Jud. 4.20; I Sam 3.9; 23.23; 25.30 (כי); II Sam. 11.20; I Ki.

Likewise the four closely related *mišpaṭim* in Deut. 13.2–6; 7–12; 13–19 and 17.2–7 are characteristic Deuteronomic *mišpaṭim*. All four deal with the problem of apostasy from Yahwe, basic in the Deuteronomic ideology. It is a mistake to imagine, as is generally done, that these four *mišpaṭim* are the product of the same authors or even of the same age. They represent three different strata in the evolution of the Deuteronomic legislation.

The oldest of these four *mišpaṭim* is that in 13.2–6. It deals with the problem of the attempt of a prophet or a dreamer of portentous dreams to entice the entire nation[155] away from Yahwe to the worship of other gods. It is clear that the *mišpaṭ* is dealing,

---

11.38; also Jer. 12.16; 17.24; Am. 6.9 (generally recognized by scholars as late); Zach. 6.15. Num. 15.24, in which והיה אם occurs also, is, of course, P. The only other Biblical passage in which והיה אם is used in this particular sense, Ex. 4.8, 9, which is usually assigned to J, i. e. to pre-Deuteronomic authorship, manifests a certain awkwardness, due to the suddenness of the transition, and may therefore reveal the hand of an editor. In Gen. 38.9; Jud. 6.3 and Amos 7.2 the *waw* of והיה is connective and not consecutive; consequently in these three passages והיה אם has an altogether different force than in those cited above, and may therefore well be of pre-Deuteronomic authorship. The significant fact in all this is that the expressions והיה כי and והיה אם seem to have been used only by Yahwist and Deuteronomic, i. e., Southern writers, and never, not even a single time in a passage which can with assurance be assigned to E, by Northern writers. This fact becomes all the more significant when we note the frequency with which these expressions are used in the Deuteronomic *mišpaṭim* and the complete absence of their use in the *mišpaṭim* of C, especially in places like Ex. 21.5, 33; 22.2b, 3, 6 etc., where they might very well have been used, and undoubtedly would have been used had these particular *mišpaṭim* come under the influence of Deuteronomic editors. This fact seems to stamp these *mišpaṭim* of C clearly as the product of Northern literary activity, not only in their present form and position in C, but also in the original *mišpaṭ*-corpus from which they were borrowed. In other words, this fact seems to indicate that this original *mišpaṭ*-corpus, from which these C *mišpaṭim* were drawn, was itself the product of Northern legislative and literary activity; cf. below, p. 238.

[155] Such is unquestionably the import of both the second singular and the second plural in vv. 2–4a and 6aβb and the second plural in vv. 4b-6aα. In all likelihood vv. 4b–5 and all of 6 after יהוה as far as להדיחך are from RD; but if so, then this is all the more significant, for then it becomes clear that even RD understood that the *mišpaṭ* deals with the entire nation as a unit.

not with an imposter nor a false prophet, in the strict sense of the word "false," but with one who has been and is recognized as a regular, professional prophet or diviner, and who is able to give the customary proof of his authority, in that he prognosticates correctly something which does actually happen just as he had predicted. None the less the *mišpaṭ* charges the people not to put faith in that prophet or diviner nor to hearken to him, for his message, endowed with prophetic authority though it seem to be, is nevertheless contrary to the fundamental principle of Yahwe-worship, particularly as revealed in Deuteronomic law.

Impliedly the authority of the Deuteronomic law is greater than that of any single prophet, even though the message of the latter be reinforced by the customary proof of his prophetic power. Clearly this *mišpaṭ* is the product of a time when the old, recognized authority of the prophet was beginning to yield to that of the codified law as the official expression of the will of Yahwe and of the basic principles of His worship. This *mišpaṭ* can hardly be the work of D1 writers, in 621 B. C. It seems to picture rather a condition which must have been quite common in the period of reaction against the rigorism of the Deuteronomic Reformation in the years between the death of Josiah in 608 B. C. and the beginning of the exile in 586 B. C., that significant reaction which is pictured so graphically in Jer. 44. This *mišpaṭ* is obviously an expression of a definite attempt on the part of Deuteronomic legislators to combat this reaction and to reenforce the observance of the Deuteronomic Code.[156] It should also be noted in passing that the punishment prescribed by this *mišpaṭ* for the false prophet, is execution by the state.[157]

The second *mišpaṭ* in point of age in this group is that in

---

[156] Ezek. 14.9ff. seems to deal with this very same problem. Moreover, it seems to imply that the apparent authority of the prophet, manifested presumably by his having prognosticated correctly in the customary manner, was due only to the fact that Yahwe is purposely leading that false prophet on to destruction. This is, of course, a somewhat different hypothetical explanation than that offered editorially in Deut. 13.4b for the fact that this obviously anti-Yahwe, and therefore false, prophet has none the less prognosticated truly. Both passages, of course, assume that correct prognostication can come only from Yahwe in accordance with His will and purpose.

[157] Cf. above, p. 56.

vv. 13–19. It deals with the case of the attempt to apostatize away from the worship of Yahwe to that of other gods, not the whole nation, as in vv. 2–6, but only the people of a single city or town. And the attempt to apostatize is made here, not by a false prophet, but by a group of the men of the city or town itself, naturally stigmatized by the Deuteronomic legislators as "worthless fellows." Only the second person singular is used here, manifestly referring still to the people as a whole. But it is significant that the group to be apostatized is no longer the entire people, but merely the inhabitants of one single city or town. Obviously the old national unity had begun to give way to a definite internal disorganization, where each city or town constituted a unit of action and had seemingly full authority over itself. Furthermore, it is significant that the initiative in this movement of apostasy is made, no longer by a recognized prophet or diviner, speaking seemingly in Yahwe's name, but by a group of ordinary, though unquestionably influential, laymen. The situation with which this *mišpaṭ* deals conforms even more closely than that in vv. 2–6 to that which is pictured in Jer. 44. The background of internal national disorganization which this *mišpaṭ* displays fits best the conditions which must have obtained in Palestine shortly after the beginning of the exile in 586 B. C. and which probably continued to a greater or less degree until its end. We may therefore regard this *mišpaṭ* in vv. 13–19 as the product of just this period[158] and as representing a second attempt to enforce faithful worship of Yahwe in conformity with the principles set forth in the Deuteronomic Code in the face of the social conditions and the natural reaction against the rigorism of Deuteronomy which the national calamities incidental to the overthrow of the nation fostered.[159]

---

[158] It is clear that the treatment here prescribed for the apostate city is practically the same as that which Deut. 20.16–18 prescribes for the cities of the traditional, non-Yahwistic, pre-Israelite inhabitants of Palestine, and envisages the very situation against which 20.18 warns. The dependence of 13.13–19, or at least of vv. 16b–19 upon 20.16–18 is self-apparent, and may perhaps point to an early post-exilic date rather than to one still within the exilic period.

[159] Vv. 18–19 are perhaps quite late, amplifying glosses. They are entirely unessential to the *mišpaṭ* proper, are predominantly hortatory in character,

The third stage in the evolution of this legislation dealing with apostasy from Yahwe is found in the two *mišpaṭim* in 17.2–7 and 13.7–12. They present two complementary aspects of one and the same picture. 17.2–7 deals with the question of the procedure in case a single individual be found in Israel who has actually apostatized and gone over to the worship of other deities, and the evidence against whom is clear and convincing. The *mišpaṭ* provides that this person shall be put to death by stoning.

Along with this the *mišpaṭ* in 13.7–12 deals with the somewhat alternative case of one person, A, attempting, though unsuccessfully, to entice another, B, to the worship of deities other than Yahwe. The *mišpaṭ* understands perfectly that such an act would be secret, and that none would probably know of it except A and B themselves. The *mišpaṭ* not only charges B not to hearken to A nor consent to follow him, but it commands B to expose A without pity, even though A be his nearest and best-beloved, so that A might be put to death by stoning.[160]

---

and manifest many of the distinguishing earmarks of the latest strata of Deuteronomy. Moreover, they illustrate very strikingly the characteristic and important Deuteronomic principle, the full significance of which will be developed shortly, that the execution of all the sinful inhabitants of the apostate city or town has an expiatory effect on behalf of the entire people, in that it will appease Yahwe's wrath and restore the nation to the happy state of His favor and protection.

[160] 13.10, or perhaps only 10aβb, and 17.6–7a are RD. They introduce an altogether new thought, viz. that the witness or witnesses must take the initiative in the actual execution of the criminal condemned to death through their testimony. It takes but a moment's thought to realize that this very provision would tend to defeat the actual purpose of the *mišpaṭ* in 13.7–12. That was to compel the person secretly approached with the proposition to worship gods other than Yahwe to inform against his would-be seducer. The very language of 13.7 implies that this was a difficult enough procedure in itself, without making it even more difficult, if not well-nigh impossible, by requiring the informing witness to cast the first stone. Unquestionably this editorial additon was made at a comparatively late date and with the express purpose of practically rendering the execution of a would-be apostatizer impossible. Such was also the purpose of the insertion of 17.7a. This was altogether in accordance with the spirit of early Rabbinic jurisprudence; cf. Sanhedrin, IV, 5. Moreover, since it is self-apparent that 17.2–7 is altogether out of place where it stands now, and must have followed originally immediately upon 13.7–12, it is quite probable that 13.10 and 17.7a were interpolated

In these two *mišpaṭim*, it is clear, apostasy has ceased to be a group matter and has become altogether an individual affair. It is now the individual, rather than the group, that apostatizes, or rather it is the apostasy of the individual which is now the concern of Yahwe and must therefore be punished severely. This is in significant contrast to the point of view of the pre-exilic prophets who conceived of the entire problem of faithlessness to Yahwe only from the standpoint of the nation as a whole. It is obvious that these two *mišpaṭim* reflect the principle of individualism, of individual sin and responsibility, and must therefore be the product of the period following the forceful formulation and promulgation of the doctrine of individualism by Ezekiel and his age. They can therefore hardly come from a period much before the end of the exile or even the beginning of the post-exilic period.

Still another characteristic Deuteronomic *mišpaṭ* may be found in 17.8–13. In its present form this *mišpaṭ* is considerably overloaded and its original form and content obscured by the editorial insertion of several references to the priest and the obvious attempt of a Priestly editor to establish the priestly claim to judicial authority.[161] When we recognize as secondary אל הכהנים הלוים ו' in v. 9,[162] all of v. 10, v. 11aα, and in v. 12a אל הכהן העומד לשרת שם את יהוה אלהיך או, we remove all disturbing

---

by one and the same editor, and that at a time when the two passages still stood in immediate juxtaposition.

It is clear too that 17.6 is also the work of RD, though of an altogether different hand, and perhaps even of a different period than 17.7 and 13.10aβb, since it contradicts absolutely the *mišpaṭ* in 13.7–12. For that provides explicitly that the enticer to false worship should be put to death on the testimony of one witness alone, the very thing which 17.6 just as explicitly forbids (so also 19.15). And since 17.7 and 13.10aβb are obviously the work of the same editor, it follows that 17.6 must come from some hand other than does 17.7. None the less it is clear that the same late purpose of judicial leniency animates 17.6 and also 19.15 as animates 17.7 and 13.10aβb, viz. to make the infliction of the death penalty as difficult and infrequent as possible.

Also in 13.6–12, vv. 6 and 11b may well be RD.

[161] Cf. above, p. 125. But for the opposite opinion cf. in particular Hempel, *Die Schichten des Deuteronomiums*, 212ff.

[162] Also read והגיד for והגידו and in v. 11 יאמר for יאמרו and יגיד for יגידו. Quite probably v. 11b, or at least מן הדבר אשר יגידו לך is also secondary.

and contradictory matter, and leave the meaning of the original *mišpaṭ* perfectly clear. It is self-evident that this *mišpaṭ* continues the thought of 16.18 providing for the appointment of local judges in all the towns of the land with some kind of organization upon a tribal basis. Not impossibly something has been lost here, having been forced out by the insertion of the totally unrelated and secondary matter in 16.19–17.7. This lost legislation may well have provided for the appointment of a judge, or even judges, of superior rank and authority, a kind of court of appeal, as it were, in Jerusalem. At any rate the original *mišpaṭ* of 17.8–13 provided that if a civil case, whether dealing with a question of blood-revenge,[163] damages or assault, is too difficult for the decision of the local judge, so that one of the parties to the case, naturally the one against whom the local judge has decided, feeling dissatisfied with the verdict, goes up to the place of the central sanctuary, i. e., of course, to the capital, Jerusalem, to appeal the case to the higher judge who would be in office at that time, and the plaintiff makes inquiry of the higher judge as to the merits of the case, and the decision is given by that higher judge, then the plaintiff must abide faithfully by the decision, the *mišpaṭ*, which that higher judge shall declare, without deviating from it in any direction. Failure to comply fully with this decision carries with it the death penalty. The purpose of this *mišpaṭ* is self-evident. It establishes the right and the procedure of appeal from the decisions of the local courts, but provides at the same time that there shall be no more than one appeal to a higher court, and that the decision of the latter must be final and binding upon all parties.

Whether this *mišpaṭ* is D1 or belongs rather to some secondary stratum of D is not absolutely certain, at least not at first glance. It depends largely upon whether 16.18 is D1 or not. Certainly the *mišpaṭ* is not older than D1, i. e. than 621 B. C., for it seems to have a direct relationship to the institution of the single, central sanctuary, in that it implies that the place of the single, central sanctuary, i. e. the national capital, was likewise the seat of the higher court. Whether the whole institution of the local courts and of this higher court at Jerusalem implies that in pre-Deuteronomic times judicial authority was in some way linked with the local shrines, and that the destruction of these necessitated the provision for the institution of the local courts in 16.18, is not clear. Were this the case, then we would have to conclude, of course, that 16.18 is D1.

---

[163] Cf. above, note 52.

Now we know from II Sam. 8.15; 15.2–6 that during the early period of the kingdom and continuing at least until the time of Jotham, the king discharged the functions of supreme judge, and that the people were accustomed to come up to the capital to lay their cases before him for final decision precisely in the manner described in the original *mišpaṭ* in Deut. 17.8–13.[164] However, as we shall see later, with the drift of population towards the large cities and the consequent far-reaching reorganization of the economic and social life of the people, which must have been particularly strong during the latter period of the Southern Kingdom, a natural tendency manifested itself for professional judges to usurp in the large towns the function of the old, local courts of elders in the villages. This tended also, quite naturally, to centralize and systematize the entire judicial practice and to exalt more and more the position and authority of the professional judge. Quite probably too with the evolving culture and the more involved political entanglements of the last century of the Southern Kingdom the duties normally devolving upon the king tended to become more and more numerous and burdensome, so that we may well conceive that he might ultimately desire to be relieved of them somewhat. What therefore more natural than that the institution of a superior or supreme judge should evolve eventually, the apex, as it were, of the system of local judges, to whom the earlier judicial functions of the king would be assigned? Just this organization we find in Deut. 17.8–13. We can easily imagine that to such an institution Josiah would readily consent. We need therefore not hesitate to regard the nucleus of the *mišpaṭ* in Deut. 17.8–13 and also the provision for local judges in 16.18 as D1.[165]

[164] Cf. I Ki. 3.16–28; II Ki. 15.5.

[165] It is clear also from Is. 11.3f. that the Messianic Davidic king was popularly expected to resume the role of supreme, absolute and perfect judge.

These considerations establish with reasonable certainty that the five *mišpaṭim* in Deut. 13.2–19 and 17.2–13 are altogether the product of Deuteronomic legislators. When we examine them carefully we find in them the same basic characteristic of form as we noticed in the *mišpaṭ* in 15.12–18, viz. the regular use of the second person, particularly in the singular. Actually all of these are simple *mišpaṭim*, without any subordinate conditions. The only one which has anything approximating such a subordinate condition is the *mišpaṭ* in 17.8–13. Actually vv. 12–13 constitute what might be regarded as such a subordinate condition. In the older *mišpaṭim* this would undoubtedly have read ואם יעשה איש בזדון etc. In this respect too the deviation of these distinctively Deuteronomic *mišpaṭim* from the older type is readily apparent.[166]

But in significant contrast to these distinctively Deuteronomic *mišpaṭim* we find in Deuteronomy quite a number of other *mišpaṭim* which depart radically from the characteristic Deuteronomic, and approximate closely, or even agree fully with the older *mišpaṭ* form. They use the third person singular throughout,[167] while the protasis of the main condition is invariably introduced by כי and all subordinate conditions by אם or ואם. Analysis of two of the *mišpaṭim* of this type, viz. in 19.15–21 and 22.28–29, has demonstrated already their striking similarity to the *mišpaṭim* of C, and in addition has shown that a direct relationship existed originally between the body of *mišpaṭim* in Deut. 22.28–29 and that in Ex. 22.15–16. Detailed analysis of the remaining *mišpaṭim* of this group will establish more clearly and convincingly their marked similarity and original, close relationship to the *mišpaṭim* of C.

Likewise it is clear from Deut. 17.18f. that the theoretical, though confidently awaited, post-exilic king whom Deut. 17.14–20 describes, was expected to again discharge the functions of supreme judge. For this purpose he was required to have a copy of the law constantly at his side.

[166] Other laws, not *mišpaṭim* themselves but closely approximating the characteristic Deuteronomic *mišpaṭ* form, are to be found in 20.10–14; 19f.; 21.10–14; 24.5; 10–13. Of 21.22f.; 25.1–3; 11f. we shall have occasion to speak later and in detail.

[167] In the few cases where the second singular is used we shall see that invariably it is the result of editorial revision, precisely as in Ex. 21.2, 23.

The internal unity of the body of *mišpaṭim* in Deut. 22.13–29 is self-evident. It consists of four characteristic *mišpaṭim* all dealing with conditions of marriage, and in particular with the question of improper sexual relations in connection with marriage and the penalties for these. The first *mišpaṭ* is quite extensive, covering vv. 13–21. It is also composite in that it consists of two alternative conditions, with differing procedures in each case. The *mišpaṭ* says this: If a man marries a woman and has sexual relations with her, but then comes to dislike her and so makes evil charges against her and thus gives her a bad reputation, and he says of her, "I married this woman and came unto her, but I did not find her a virgin," and then if the maiden's parents bring forth the proofs of the virginity of the maiden before the elders of the town at the gate, and if the father of the maiden says to the elders, "I gave my daughter as wife to this man, but he has come to dislike her, and he has even made evil charges against her, saying, 'I did not find thy daughter a virgin,' but here are the proofs of my daughter's virginity," and (with this) they spread the garment before the elders of the town, then the elders of the town shall take the man and chastise him, and shall (also) fine him one hundred shekels of silver, and give it to the father of the maiden, since he has given an Israelite virgin an evil reputation, and she shall remain his wife, whom he is never permitted to divorce. But if the charge is found to be true, and it is discovered that the maiden was not a virgin, then the maiden shall be brought to the door of her father's house, and the men of the town shall stone her to death, for she has wrought wantoness in Israel by bringing the sin of fornication upon her father's house;[168] and thou shalt purge the evil from thy midst.

Within this *mišpaṭ* there are only a few and easily recognizable Deuteronomic editorial additions. These are v. 14aβ, והוציא עליה שם רע, which clearly disturbs the smooth and logical flow of the thought,[169] the corresponding clause in v. 19aγ, where the explanatory clause not only disturbs the free and logical development of the thought, but also, quite surprisingly, instead of continuing to speak of this particular maiden, speaks instead in a general way, and for a definite reason which we shall see soon, of a "virgin of Israel;"[170] and finally v. 21aβb. With these editorial additions omitted, the form and character of the original *mišpaṭ* become all the clearer, and quite evidently conform in every essential way to the pattern of the old *mišpaṭim*.

---

[168] Probably read with practically all the versions לְזנות instead of לִזנות. For the concept of premarital sexual intercourse defiling the father's house, and the consequent execution of the guilty maiden, cf. Lev. 21.9. For the practice of the present-day Bedouin, clearly based upon the same principle, that the guilty maiden has defiled the honor of her clan, cf. Musil, *op. cit.*, III, 208ff.

It is noteworthy that in this *mišpaṭ* the judicial body consists of the elders of the town, sitting at the town gate, their regular place of assembly. We shall find that in practically all of these old *mišpaṭim* preserved in Deuteronomy these elders at the gate constitute the regular judicial authorities, with full power to investigate thoroughly all cases laid before them and to fix the penalties and impose sentences. It was probably from their decisions, given while sitting as the local courts, that appeals were taken to the king by dissatisfied participants in the case.[171]

A moment's thought shows also that this *mišpaṭ* is the product of a period which was culturally relatively somewhat advanced. In the earliest stages of Semitic social evolution, as for example among the present-day Bedouin,[172] the case would probably not have come before even the elders of the town. The wronged husband would have brought the charge of delinquency against his wife directly to her family, who, if convinced of the correctness of the charge, would undoubtedly have put the maiden to death themselves, on the ground that the family honor had been violated. Just this is the explicit statement with regard to the same offense in Lev. 21.9, and this is certainly the implication of the fact that the execution of the maiden here takes place at the door of her father's house. The very fact that the case here is referred to the judicial authorities for investigation and decision implies a relatively advanced social organization and a definite community interest and participation in the case.

---

[169] Notice that this motif of giving the maiden an evil reputation is omitted entirely in v. 17.

[170] The context shows that it is impossible to interpret בתולת ישראל as "the virgin of Israel." Either we must interpret it as "a virgin of Israel," i. e. "an Israelite virgin" or else construe it as a collective, "the virgins of Israel"; not impossibly we might even vocalize בְּתוּלֹת. The latter interpretation seems the more probable because of the thought inherent in it of collective sin resting upon all Israel.

[171] Above, p. 134.

[172] Cf. Musil, *op. cit.*, 208ff.; Burckhardt, *Notes on the Bedouins and Wahábys*, 63. For the present-day procedure in Nablous, cf. Jaussen, *Naplouse*, 83.

Moreover, the provision for the payment of one hundred shekels[173] of silver to the father of the woman in case the charge be proved false, evidences a definite social advance over the more primitive practice, as current among the Bedouin today. Such a false charge against a present-day Bedouin wife would have justified extreme measures against the husband on the part of her family, even blood-revenge or forcing the false accuser to flee for self-protection from his clan. Likewise the specification of a fixed sum of money evidences the existence of a definite money-system, in itself proof of relatively advanced cultural development.

Careful examination of the editorial additions to the *mišpaṭ* establishes with certainty that they are animated by a definite and significant purpose. The expression, ובערת הרע מקרבך, occurs after almost every one of the older *mišpaṭim* in Deuteronomy. In every case it is manifestly not a part of the original *mišpaṭ* itself, but is a Deuteronomic editorial addition, and establishes clearly the reason why these Deuteronomic editors extracted the *mišpaṭ* from its original place in the old, pre-Deuteronomic *mišpaṭ*-corpus and inserted it into its present place in Deuteronomy. הרע here is the same expression which occurs so frequently in post-exilic Deuteronomic writings. It is an elliptical expression for the full phrase, which recurs constantly in these same writings, הרע בעיני יהוה, "that which is evil in the eyes of Yahwe." It is the antithesis of the phrase which occurs with almost equal frequency in these same writings, הטוב or הישר בעיני יהוה, "that which is good" or "right in the eyes of Yahwe."[174] "That which is evil in Yahwe's eyes" is those actions or conditions in the life and conduct of the people which are of an offensive nature. They are of either moral or ritual character. They are regarded as contrary to the will of Yahwe and His purposes with Israel and to the standards of life and worship to which He would have Israel conform.

---

[173] I. e. twice the amount specified in v. 29. Impliedly to falsely accuse a maiden of immoral conduct was considered an offense twice as great as to rape her. This is, however, easily comprehensible. The two *mišpaṭim* conceive in each case that the offence is not so much against the maiden herself as against her father and his honor and the honor of the family or clan. In case of rape the dishonor is easily compensated for by the offender paying the father what was considered undoubtedly the bride-price, and then taking the woman as his wife, and being deprived of the privilege of ever divorcing her. All this implies that in this case the entire procedure was one of simple marriage, only a little extraordinary in that the sexual relations began a bit prematurely, before the solemnization of the marriage and without the father's consent. But in the other case the honor of the father's house and clan had been badly blackened, even though the charge had been proved false. It was an insult which could be mitigated only by severe measures; therefore, very properly, the provision that, in addition to being publicly flogged, the offender must pay the father of the innocent maiden twice the sum prescribed for the case of rape.

Therefore this conduct and these conditions are utterly displeasing to Him; and this divine displeasure, resulting from these breaches of conduct, has far-reaching consequences. These offenses, so the obvious implication is, incite Yahwe's indignation and anger against not merely the sinning individual, but also against the entire people. In consequence He might allow His wrath free rein by giving Israel over, until such time as it would repent of its conduct and return to Him purified and regenerate, into the hands of a powerful and oppressive hostile nation. That these Deuteronomic writers represent Yahwe as having done quite frequently in Israel's past history, particularly during the period of the Judges.[175] Their obvious purpose in so interpreting or rather reinterpreting, Israel's past history is manifestly to point a lesson of great significance for the Israel of their own day, viz. that only through faithful observance of Yahwe's laws by all the people and through punctilious conformity to the standards of conduct and to the various institutions which He has established, can the deliverance of Israel from the sad fate of conquest and exile and from the foreign power which was oppressing it at the time be achieved and Yahwe's favor and protection be

---

[174] For הרע בעיני יהוה cf. Deut. 4.35; 9.18; 17.2; 31.29; Jud. 2.11; 3.7, 12; 4.1; 6.1; 10.6; 13.1; I Sam. 15.19; I Ki. 11.6; 14.22; Is. 65.12; 66.4; Jer. 7.30; 32.30; 52.2, and *passim*. For הטוב or הישר בעיני יהוה cf. Deut. 6.18; 12.25, 28; 13.19; 21.9; I Ki. 11.33, 38; 14.8; Jer. 34.15 and *passim*; cf. also Deut. 12.8; Jud. 17.6; 21.5. Very significantly neither phrase is found even once in any pre-Deuteronomic writing. They are obviously characteristic Deuteronomic expressions and voice a principle of far-reaching import in Deuteronomic and post-Deuteronomic thought and theology.

[175] Cf. Jud. 2.11–14; 3.8; 4.1; 6.1 and *passim*. Moreover, in this connection the entire Deuteronomic framework of Judges becomes deeply significant.

Its general and recurrent theme is set forth in Jud. 2.11–3.6. It is that because of its sins, and particularly the arch-sin of faithlessness to Yahwe and worship of other gods, Yahwe gave Israel over into the power of strong, cruel and oppressive enemies. In this subjection Israel suffered grievously. But its sufferings had disciplinary value, for they taught Israel, on the one hand, the enormity of its transgression against Yahwe, and, on the other hand, Yahwe's power, justice and potential mercy and forgiveness. In time therefore Israel repented of its sins and returned to Yahwe and was forgiven. Yahwe in turn raised up a deliverer for Israel, a judge, who threw off the oppressive yoke and restored Israel's independence. So long as he lived he governed Israel and held it firm in its allegiance to Yahwe and in its faithful adherence to His laws. But after his death, when Israel was left leaderless anew, once again it returned to its evil ways; once again each man began to do "what was right in his own eyes"; and once again history repeated itself most literally, and Israel was given over to a new oppressor. Obviously, the implication is, the chief reason for Israel's recurrent faithlessness and calamity is lack of permanent, divinely selected and divinely guided leadership. What Israel needed most therefore, was not a judge, nor even a series of judges, but a king, or rather an unbroken succession of kings, a dynasty, divinely commissioned and inspired; therefore the editorial summary of the import of the Book of Judges as reinterpreted by its late Deuteronomic editors, "In those days there was no king in Israel; each man used to do what was right in his own (i. e. not in Yahwe's) eyes" (21.25; cf. 18.1a; 19.1a).

The historic background of this entire theory, this philosophy of Israel's history it might almost be called, is perfectly clear. The principle that national calamity was not for destruction, but for the discipline of the sinful and faithless nation and its eventual return to Yahwe and His forgiveness and restoration of it to independence and former glory, found its first positive expression in the later prophecies of Jeremiah. Furthermore, the picture of Israel needing a king to guide it aright and hold it firm in Yahwe's way, could have taken shape only at a time when there was no king. Nay more, this concept of this supreme function of the king could hardly have arisen in a generation which still remembered distinctly the actual character of the kingship in the last two decades of the pre-exilic kingdom. The picture was undoubtedly suggested by the role of Josiah in connection with the Deuteronomic Reformation, but assured to them thereafter. Disobedience and failure to conform would arouse Yahwe's wrath once more and subject Israel anew to the great danger of again being conquered and exiled and again rendered tributary to an oppressive and cruel foreign power. Therefore it behooved Israel to know all the laws and to obey them most scrupulously.

And another working of the disregard of the laws and institutions of Yahwe by Israel, and particularly those laws and institutions which were of a specifically moral or ritual character; such disobedience and neglect defiled both the people and the land,

undoubtedly too it shaped itself only at some time after the end of the actual kingship in 586 B. C., and most naturally and probably in connection with the expected restoration of national independence and statehood under the leadership of a king divinely chosen and supported, who, after regaining freedom for the people, would establish a never-ending dynasty (cf. II Sam. 7.15) and, together with his successors after him, would rule Israel wisely and firmly and hold it true to its allegiance to Yahwe and to His worship and way of life.

It would seem almost as if this novel interpretation which this Deuteronomic framework puts upon the older literary nucleus of the Book of Judges made it a piece of campaign literature, a *Tendenzschrift*, designed to arouse the spirit of the people and make them await with confidence, and even induce them to labor as best they could, for the impending advent of the divinely commissioned king. It is difficult to avoid the conclusion that the goal of this propaganda was Zerubabel. At any rate it is beyond question that this Deuteronomic reinterpretation of Judges, through the new framework put about it and through internal reorganization, seemingly with considerable liberty in the matter of rearrangement of its various historical narratives, coming for the most part, from the early, tribal period of Israel's settlement in Palestine, and with its peculiar concept of what was "evil in the eyes of Yahwe," was the product of the period at the very end of the Babylonian exile, or, perhaps more exactly, of the early period of the restoration, say about 525 B. C.

Obviously too, just this would be also the time of the Deuteronomic additions or framework to the various *mišpaṭim* in Deuteronomy with which we have to deal. But if this be the age of this Deuteronomic framework of these *mišpaṭim*, then, at least so far as the *mišpaṭim* themselves are concerned, they must date either from this same period or, if we are compelled to conclude, as we shall with the majority of the *mišpaṭim* with which we must deal, that they are older than the Deuteronomic framework, then the majority of the *mišpaṭim* themselves must certainly come from the pre-exilic period, and may well be, as we shall see, of pre-Deuteronomic origin, and, for the most part at least, if not altogether, of kindred origin with the *mišpaṭim* of C with which we have already dealt.

so that Yahwe could no longer consent to continue to dwell in their midst. This principle is expressed most clearly and specifically in Num. 35.34, a passage from the Priestly Code, and therefore setting forth the characteristic Priestly point of view. It occurs in connection with the Priestly legislation against bloodshed and its provisions for the cities of refuge. After denouncing unqualifiedly all bloodshed, on the ground that the blood of a slain man defiles the land unless atoned for by the blood of the murderer, the Priestly legislator charges the people, "You shall not render impure the land which you inhabit, in the midst of which I dwell; for I, Yahwe, am dwelling in the midst of the children of Israel." The point of view of this verse is clearly not that of sojourn in the desert, but of actual residence in Palestine. Israel is dwelling within the land, and Yahwe in turn dwells in Israel's midst within the land, impliedly, of course, in the Temple in Jerusalem. Therefore, because of Yahwe's presence in its midst, the land must not be defiled; for, impliedly, a deity, holy as Yahwe is, can not continue to dwell in a defiled land or place. Therefore, too, the annual ceremonies of purification of sanctuary, priesthood and people, from all manner of unwitting, presumptive sin and defilement on the annual Day of Atonement, or, more literally, of Purification.[176]

This point of view and this theological principle are, of course, basic in the theology and legislation of the Priestly Code. But they are by no means peculiar to this Code. They are a principle and a practice resulting necessarily from the concept that Yahwe had actually and literally taken up His residence in the Temple in Jerusalem, in the midst of the land and the people. It is an idea which, we have shown elsewhere,[177] had begun to define and assert itself at the very earliest only in the Deuteronomic period, shortly before the exile, if in fact that early, as one result of the Deuteronomic Reformation and its program of centralization of national worship in the Temple at Jerusalem. What is probably the first concrete and positive expression of this idea we find in Ezekiel's picture of the departure of Yahwe, in the form of the *kebod Yahwe*, from the doomed Temple, preparatory to its conquest and destruction by the Babylonians, and in the same prophet's complementary picture of the return of Yahwe, still in the form of the *kebod Yahwe*, at the end of the period of Israel's discipline and regeneration, to the rebuilt Temple, in order to there take up again His permanent residence in Israel's very midst.[178] The same idea found positive affirmation by both Haggai and Zechariah, in their agitation for the rebuilding of the Temple.[179] And this idea dominated practically all the thinking, theologizing and legislation of the post-exilic period, or at least of the first two hundred years thereof.

---

[176] Lev. 16; cf. also 20.3. For the effects of defiling the land and the consequent endangering of Yahwe's or Israel's continued residence in its midst, cf. Lev. 18.25, 27; 19.29; Deut. 21.23; 23.15; 24.4.

[177] "The Book of the Covenant," Part I, *HUCA*, V (1928), 50–58.

To safeguard Yahwe's continued and permanent residence in the Temple, in Israel's midst, with all the guarantee of eventual complete salvation, assured independence, economic prosperity and political ascendency which it gave, perfect obedience to every one of Yahwe's laws, even those seemingly most insignificant in character, and punctilious conformity to all of Yahwe's institutions and standards of life were required of every individual Jew. The slightest deviation therefrom by any single individual, no matter how unimportant he might be, was evil in Yahwe's eyes, and was therefore liable to have the effect of stirring up Yahwe's anger against the entire people, or, what is merely the other side of the same medal, of defiling both land and people and compelling Yahwe's withdrawal from His now unclean and desecrated dwelling-place, with all the misfortune and suffering which His withdrawal would entail for Israel, a people thus left without a god.

Consequently every sin, every offense against the standards of ritual cleanness and moral propriety, even though only by an individual, had a definite and important significance for the entire people. The sin of one man might incite Yahwe's wrath or drive Him from the defiled land; and then the entire community would suffer.[180] Every sin therefore, no matter what its degree or character, had a positive community aspect. For every sin the entire community had accordingly a practical responsibility. It behooved the community to endeavor by every means in its power to restrain every individual member within it from sinning; hence so much of the minute, detailed legislation, both ritual and moral, of the Priestly Code in its various strata, and also of the post-exilic strata of the Deuteronomic Code, and hence too so much of the extreme rigorism of this Deuteronomic and Priestly legislation. And equally it behooved the community to see that no offense was disregarded, that every offender was properly, promptly and severely punished, both as a warning to others against sinning in similar manner, and likewise, there is good reason to believe, because the extreme punishment of the sinner, and even his or her death, acted as a kind of atonement for the sin and had therefore a positive expiatory force in behalf of the community at large.[180a]

---

[178] Ezek. 1–11; 40–48; cf. in particular, 43.7ff. This assumes, of course, the correctness of the traditional theory of the date of Ezekiel, a matter which is nowadays beginning to be seriously questioned.

[179] Cf. Hag. 1.8f.; Zech. 2.15; 8.3, 20–22; cf. also Is. 2.3; Mic. 4.2.

---

[180] Cf. Deut. 31.17, obviously a very late gloss, but none the less giving very illuminating expression to the thought that misfortunes befall Israel only when and because Yahwe, angered by its faithlessness, personally withdraws from its midst.

[180a] As has already been intimated more than once, this principle is most clearly expressed in the Priestly Code legislation in Num. 35.31–34, forbidding absolutely the acceptance of redemption money in the case of premeditated murder, but commanding instead that the murderer must be put to death; for only through his death can the land, in the midst of which Yahwe dwells, defiled by the blood of the murdered man, be restored to its pristine purity. Impliedly this is also the full implication of the Priestly legislation in Gen. 9.6, the form of which approximates rather closely that of the *ḥoq* in Ex. 21.12. And in all likelihood this is also the implication of the *ḥoq* in Ex. 21.12, the comparatively late date and Priestly authorship of which we have already posited, as well as the fact that it represents a substitution for an older and, not improbably, a somewhat milder *mišpaṭ* which stood here originally. The fact that Num. 35.31 explicitly forbids the acceptance of redemption-money in the case of premeditated murder implies no doubt that in the period preceding this legislation the giving of redemption-money in such cases had been a not uncommon practice and that in this way the murderer's life was spared to him. This Priestly legislation was clearly designed to terminate this practice and thus to provide not merely blood-revenge but also ritual expiation for the defiled land. Viewed objectively this Priestly legislation manifestly represents a reaction and reversion to what was in its outward aspects something very

Exactly these principles find definite and forceful expression in certain obviously exilic or post-exilic strata of Deuteronomy, and particularly in connection with the various *mišpaṭim*, both those of immediate Deuteronomic composition and those older *mišpaṭim* which have been extracted from their original *mišpaṭ*-corpus and inserted into the Deuteronomic Code. All of them, without exception, define certain offenses which, for one reason or another, are regarded as particularly objectionable to Yahwe, as "evil in Yahwe's eyes," and which must therefore be zealously guarded against lest Yahwe be angered and evil consequences result for Israel.[180b] In particular the expression ובערת הרע מישראל or מקרבך occurs ten times in Deuteronomy,[181] and only in Deuteronomy, and only as the climax of various *mišpaṭim*. It is used in absolutely no other connection elsewhere in the Bible, and indicates manifestly the handiwork of Deuteronomic editors.[182] And, with but one very questionable exception,[183] this phrase is invariably associated with the imposition of the death penalty.[184]

---

similar to the original, or at least a very early stage of the institution of blood-revenge.

[180b] Cf. Mal. 2.17.

[181] 13.6 (death of the false prophet); 17.7 (death of the person who seduces to apostasy); 17.12 (death of the person who refuses to abide by the decision of the supreme judge); 19.13 (death of the murderer; cf. also 21.8–9); 19.19 (death [cf. note 183] of the false witness); 21.21 (death of the rebellious or degenerate son); 22.21 (death of the non-virgin); 22.22 (death of the adulterers); 22.24 (death of the betrothed maiden and her paramour); 24.7 (death of the kidnapper of a fellow-Israelite).

[182] So also Jirku, *Das weltliche Recht im Alten Testament*, 60.

[183] 19.19. Here the command is merely to do to the false witness as he had purposed to do to the man whom he had falsely accused. Undoubtedly, however, the one thought contemplated here is death. But if this be granted, then the evidence is cumulative and incontrovertible that, just as we have already concluded (above, pp. 72–77), the *lex talionis* in v. 21b is not original here, but was inserted by some late editor or glossator who completely misunderstood the real import of this law.

[184] In three of the ten cases the specific provision is made that the guilty person shall be stoned to death. In the remaining seven cases no particular form of execution is specified. It is, however, fair to presume that in all of them the death sentence was imposed in like manner, by stoning. In all likelihood this particular method of execution was employed for a definite reason. As has been said, the guilty person was in these cases something more than

The obvious implication is that the death of the particular offender in each case removes from the midst of the people the defilement, the evil, resulting from the crime or sin. The crime or sin has

an ordinary criminal. He was a defiled and defiling person as well, the object of Yahwe's wrath. (Probably, as we have already intimated [above, pp. 89–91], for practically the same reason, because it was supposedly possessed by a dangerous and defiling evil spirit, the habitually goring ox was commanded to be killed by stoning [Ex. 21.29].) Execution by hanging, impaling (cf. Num. 25.4; II Sam. 21.9), burning or any other conventional means, would have necessitated physical contacts between executioners and executed, and this would in turn, in theory at least, have transmitted the defilement from him to them. This was avoided in execution by stoning, since in this there was no direct physical contact between executioners and executed. And even more, as we have seen, these offences had something of a social nature in them. The defilement which the offence had called forth rested not only upon the offender himself, but also to a degree upon the entire people or community. Through the act of casting the stones from their hands upon the body of the offender, whatever of defilement rested upon them was thought, no doubt, to be loaded upon the condemned man. This too may be a partial reason for the late provision in 17.7 that the witnesses must cast the first stone; presumably the defilement of the witness of such an offense was more direct and in greater degree than that of the community at large.

If this general conclusion be correct, then it follows that the death in this manner of the condemned person had something, and perhaps even much, of an expiatory, scapegoat character (cf. note 159). This would account for the otherwise seemingly extreme severity of the sentence, particularly in such a case as that of the rebellious or degenerate son (21.21). This will make clear too why not infrequently (13.9; 19.13, 21) the injunction is added, "Thine eye shall not pity" (cf. also 7.16). 25.12 is the only case in which this phrase is used other than in connection with the death sentence; but even there it is apparent that the sentence imposed is extremely severe. Obviously the very use of this phrase indicates that the legislators were fully aware of the severity of the sentence, but felt that the end purposed, viz. the prevention of all unseemly or criminal conduct in Israel, in order to safeguard the presence of Yahwe from all defiling evil, justified and even necessitated these extreme measures. (It is noteworthy too that, with the exception of Gen. 45.20, in which too it is used in a decidedly different connection, the expression לא תחוס עינך is found only in Ezekiel or in later Biblical writings.) This too is clearly the reason why, in the Priestly, and therefore likewise post-exilic, legislation in Num. 35.31–34 what was obviously the current, milder and culturally more advanced practice of accepting blood-money for a murder was specifically abrogated, and the older and culturally more primitive practice of blood-revenge was reinstituted. The blood of the murdered man defiled the land (cf. Deut. 21.1–9). To accept blood-money would be tantamount to defiled, not only the criminal, but also the entire people with him. The death of the offender has therefore an expiatory effect in behalf of the people.[185]

acquiescence in the continuation of the defilement of the land. Only through the death of the murderer could the crime be expiated and the defiled land be purified (cf. also Gen. 9.6 [likewise P]). And since Yahwe dwells in the midst of the land, the land must be kept pure at all costs. Therefore the reversion to the older and more primitive and cruel practice. Here the expiatory character of the execution of the criminal is particularly apparent.

In this connection too the provision in Num. 35.25 that the manslayer, who has killed a person unintentionally, shall reside in the city of refuge continually until the death of the high-priest becomes meaningful. It implies, undoubtedly, that if during this period he ventures forth from the city of refuge and is met by the "blood-avenger" and is slain by him, no sense of crime and no consequent punishment shall attach to the latter. Only after the death of the high-priest could the manslayer leave the city of refuge and return to his home with impunity. Manifestly, it is implied here, the death of the high-priest serves in a way as an expiation for the blood which has been shed; and, of course, blood thus expiated no longer needs to be avenged. (Cf. Kaufman, "Probleme der israelitisch-jüdischen Religionsgeschichte," *ZAW*, 7 [new series] [1930], 29, note; Nicolsky, "Das Asylrecht in Israel," *ibid.*, 167–172.)

Quite probably in this practice of putting to death by stoning a criminal or sinner, whose guilt was thought to defile the entire community, and whose death therefore served as an expiation by the community, we may find the origin, or at least one of the origins of the practice, attested for all parts of the Semitic world, both ancient and modern, of erecting cairns or stone-heaps over graves, real or fancy. It seems highly probable that a person so executed was left lying on the spot where he had fallen, and the stones cast at him were left lying and were even gathered and heaped up above the corpse. The weight of the stones above the corpse was thought to keep it down and prevent its ghost from wandering about as an evil spirit, troubling the neighborhood. (For the thought of stones resting upon a corpse weighing it down as a heavy burden, cf. Musil, *Arabia Petraea*, III, 449; also Bertholet, *Kulturgeschichte Israels*, 98.) Each passer-by would cast a stone or pebble upon the heap and thus remove from himself whatever defilement rested upon him and transfer it to the stone-heap and the evil one who rested beneath it. At the same time he would protect himself thereby from danger of an attack by the evil spirit. In this way these stone-heaps would grow in time to cairns of considerable size. This interesting subject of stone-heaps such as these in the Semitic world has been treated most fully by Doutté, *Magie et Religion dans l'Afrique du Nord*, 421–434. For evidence of the practice in ancient Israel, cf. Prov. 26.8 and Grüneisen, *Der Ahnenkultus und die Urreligion Israels*, 269.

[185] This too is unquestionably the implication of the phrase frequently

Returning now to the *mišpaṭ* in Deut. 22.13–21, we realize in the first place that the phrase ובערת הרע מקרבך in v. 21b must be RD. And in the second place we understand too the full import of the obviously editorial, explanatory statement of v. 21aγ, that the guilty maiden has wrought wantoness in Israel. The implication is that all Israel is affected by and is even in a way a partner in her crime, or at least in the evil effects thereof; therefore the extreme severity of the penalty prescribed. This too must be the implication of the editorial insertion in vv. 14aβ and 19aγ; for by giving this particular maiden an evil reputation the husband has likewise attached something of this same reputation to all the maidens of Israel.[186] It is clear therefore that these post-exilic Deuteronomic editors have extracted this *mišpaṭ* from its original place in the old *mišpaṭ*-corpus, just because it defined what seemed to them a particularly heinous offense, and one therefore displeasing in the extreme to Yahwe, truly "evil in His eyes." They took over the old *mišpaṭ* bodily and, practically without any internal change, they gave it a characteristic Deuteronomic setting and thus made it a forceful expression of their peculiar, post-exilic, theological, legislative point of view.

---

occurring in the Deuteronomic framework of these *mišpaṭim*, "And all Israel shall hear and fear, and never again do after the manner of this evil thing" (13.12; 17.13; 19.20; 21.21). In effect it is tantamount to the prescription in 27.15–26 that to each curse uttered by the Levites the people must respond "Amen." Thereby they tacitly agree to submit themselves to the prescribed punishment in case they themselves become guilty of the sin in question. (For this import of the recital of "Amen" cf. Max Weber, *Das antike Judentum*, III, 85, note 1; Hempel, "Die israelitischen Anschauungen von Segen u. Fluch," *ZDMG*, 4 [new series] [1925], 98. According to the rabbis the recital of Amen served a three-fold purpose, [a] it confirmed an oath [in case A invoked a curse upon B and the latter then said "Amen"]; [b] it implied acceptance [in case A said to B, "May so and so happen to you, if you have done such and such a thing," and to this B answered "Amen"]; [c] it implied affirmation [if A said to B "Amen," it meant, "May your word be fulfilled"], Šebu'ot, 36a; Num. Rabba, IX, 46; cf. also VIII, 6; 'Aboda Zara, 65a; also *First Apology of Justin Martyr*, LXV [in *The Ante-Nicene Fathers* (ed. Roberts and Donaldson, 1885)], p. 185, "This word Amen answers in the Hebrew language to γένοιτο (so be it)."].)

[186] Therefore על בתולַת ישראל, "upon *a* virgin of Israel"; or, as already suggested, should we perhaps vocalize בתולֹת?; cf. note 170.

Obviously too exactly the same procedure obtained with the next *mišpaṭ*, in v. 22. The two *mišpaṭim* are so intimately related in subject-matter that the conclusion is inescapable that in the original *mišpaṭ*-corpus they stood in immediate juxtaposition. Just as the *mišpaṭ* in vv. 13–21, and particularly in vv. 20–21, deals with the case of the married woman who was found guilty of fornication before marriage, so the *mišpaṭ* in v. 22 deals with the case of the married woman and her paramour caught in the act of adultery. This too is naturally an offense basically displeasing to Yahwe,[187] and therefore the death penalty is prescribed for both offenders. Here too the characteristic Deuteronomic clause is appended to the original *mišpaṭ*, ובערת הרע מישראל. Impliedly the death of the two offenders expiated the crime for the rest of Israel.[188]

Having thus dealt with the cases of the maiden who was found at marriage not to be a virgin and of the married woman who committed adultery, naturally the next case to be dealt with in the logical development of the thought is that of the maiden betrothed but still unmarried who likewise lost her virginity before marriage. Obviously this case falls under two heads, viz. whether this happened with or without the consent of the maiden. This question is dealt with accordingly in the very next *mišpaṭ*, in vv. 23–27, and under these two heads. The *mišpaṭ* is therefore composite, and falls into two sections, vv. 23–24 and 25–27. The distinction drawn between consent of the maiden and lack of consent is purely an artificial one, as it needs had to be, since, presumably, there was no witness to the act; if the act was committed in the town, where impliedly help was always ready to hand, it was inferred that the maiden had not cried out in self-defense, but must have consented freely, for otherwise help would have been forthcoming. But if the crime was committed in the open country the maiden was given the benefit of the doubt; it was assumed that she had cried for help, but to no avail, that, in other words, this was a case of rape, and that she was powerless against her attacker.[189]

---

[187] Already in the Decalogue, Ex. 20.14; Deut. 5.17.

[188] 22aβ also RD. Among the Bedouin the death of both parties is the penalty for adultery. The execution may be by either the father or brother of the woman, or else by her outraged husband. For these deaths there is no penalty of blood-revenge, particularly if both parties are killed, since it is held that the blood of the one compensates for the blood of the other. (Burckhardt, *Notes on the Bedouins and Wahábys*, 63, 159; Musil, *Arabia Petraea*, III, 210; Kennett, *Bedouin Justice*, 134.) In significant contrast to this Bedouin practice the execution of the adulterers here is no longer the concern of either the father or brothers of the woman, nor yet of her husband, but is entirely, so it seems, a matter for the state or society. On the one hand, this evidences a considerable cultural advance over the Bedouin practice; and, on the other hand, it may be regarded as evidence that the crime has not merely personal, but also strong social implications, and that the death of the two guilty parties has expiatory force on behalf of the people at large.

In the first case both parties to the crime had to be put to death by stoning.[190] This sentence was executed at the town gate, presumably because that was the ordinary place of execution, as of all public affairs, and perhaps also because of the implication that the whole town had been defiled by the crime, and therefore the death of the sinners at the gate made expiation for the whole town.[191] Certainly this is the implication of the RD addition in v. 24b, the characteristic and significant ובערת הרע מקרבך. In the second case only the man is executed, of course, since he alone was adjudged guilty. Nothing whatsoever was done to the maiden. The *mišpaṭ* does not specify the manner of the man's death here, but it is safe to presume that it too was by stoning, at least in the Deuteronomic application of the *mišpaṭ*.[192]

---

[189] For exactly the same distinction in Hittite law, cf. CHt, §83.

[190] In other words, the crime is treated as adultery, according to the provision in v. 22, and the betrothed maiden is regarded as belonging to her prospective husband quite as much as if she had been already married to him.

[191] Cf. also the import of the execution at the door of the father's house, in v. 21.

[192] In this *mišpaṭ* there is a confusing use of the second person plural (והוצאתם and וסקלתם in v. 24a) and the second person singular (ובערת in v. 24b and תעשה in v. 26a). This need, however, occasion no difficulty. They are both obviously the result of Deuteronomic editorial revision and expansion of the original *mišpaṭ*. This used undoubtedly the third person plural in the impersonal sense in prescribing the death penalty, just as we find it still used in v. 21. (So also Hempel, *Die Schichten des Deuteronomiums*, 230, note 2.) For this, not at all unnaturally, RD substituted the second person plural (cf. also 19.19). On the other hand, the second person singular in v. 24b is characteristic of the recurring Deuteronomic phrase, which we have already

Then, having disposed of the case of the rape of a betrothed maiden, the next question to be discussed in the logical unfolding of the law is that of the rape of the maiden as yet unbetrothed. This is treated accordingly in the very next *mišpaṭ* in vv. 28–29. We have already discussed this *mišpaṭ* in considerable detail. The important thing to realize here is, as we have shown, that the *mišpaṭ* in Ex. 22.15–16, once unquestionably a unit with the *mišpaṭ* in Deut. 22.28–29,[193] and both following immediately upon the complex *mišpaṭ* in Deut. 22.23–27, bears to the *mišpaṭ* in vv. 23–24 exactly the same relationship which the *mišpaṭ* in vv. 28–29 bears to the *mišpaṭ* in vv. 25–27; just as the latter deal with the question of rape, in which the maiden is forcibly violated, so the former treat of the question of seduction, in which the consent of the maiden is assumed. In fact, as we have seen, it is impossible to understand Deut. 22.28–29 and Ex. 22. 15–16 fully and to comprehend how the distinction between the consent and lack of consent of the maiden was determined in each

---

discussed. Not infrequently it follows directly upon either the third person plural (21.21) or the second person plural (19.19), and almost invariably indicates either that the passage in which it occurs represents an addition by a Deuteronomic editorial hand, as here, and wherever this same clause occurs, or else the independent composition of the entire law by a late Deuteronomic writer or editor, as, for example, in 13.9–19; 17.2–5. This may indicate also that the whole of v. 26, and not merely v. 26b, is RD, and that only v. 25 belonged to the original *mišpaṭ*. It is self-apparent that v. 26a is not absolutely essential to the *mišpaṭ*, since its thought is already implied in v. 25.

Likewise in this *mišpaṭ* v. 24b is certainly RD, while vv. 24aβ and 27, both of an explanatory, and therefore non-essential character, may likewise be RD. It is noteworthy too that v. 26b presupposes likewise another *mišpaṭ*, either that which we now find in 19.11–13 or its original, or the original, however it may have been worded, of Ex. 21.12.

[193] Perhaps the fact that the offence in these two *mišpaṭim* was apparently not regarded as altogether heinous, not as "evil in the eyes of Yahwe," and therefore not necessitating the death penalty, may have had something to do with the separation of these two closely related *mišpaṭim* and the transfer of the one to Ex. 22.15–16. Certainly Deut. 22.28–29 is here only because of its connection with the other marriage-sexual relations-*mišpaṭim* in the original, pre-Deuteronomic corpus, and not because of any direct relationship to the Deuteronomic problem of "purging the evil from Israel's midst" through the execution of the guilty person. Accordingly we find here no trace whatsoever of Deuteronomic editorial amplification of the original *mišpaṭ*.

case unless we assume that the principle, enunciated in the *mišpaṭ* in vv. 23–27, applies likewise to these two *mišpaṭim*, or rather to this actual complex *mišpaṭ*, as it obviously would be if we would transpose Ex. 22.15–16 to a position immediately after Deut. 22.28–29, viz. the distinction between the act being committed in the town or out in the country.

It is clear therefore that not only does the *mišpaṭ* in Ex. 22. 15–16 constitute a complete unit with the *mišpaṭ* in Deut. 22. 28–29, and that in fact the two together constitute a single, complex *mišpaṭ*, dealing with two phases of one and the same question, but also that this complex *mišpaṭ* constitutes equally a unit with the parallel complex *mišpaṭ* in vv. 23–27, and that both of these *mišpaṭim* in turn constitute both a legal and a literary unit with the closely related *mišpaṭim* in vv. 13–22. All these *mišpaṭim*, dealing with the one central theme of marriage, or rather of improper sexual relations both before and after marriage, constituted a closely related, systematically organized, logically unfolding body of law, the unity of which is totally incomprehensible in its present settings in C and in Deuteronomy, where not the slightest connection with the legislation which immediately precedes or follows in either code is discernible.[194] This unity is comprehensible only on the assumption that all these laws once stood together in an old, pre-Deuteronomic corpus of *mišpaṭim*, the existence of which, on the basis of various indications here and there, we have already posited.

The very next *mišpaṭ* in Deuteronomy occurs in 24.1–4. It too deals with a question of marriage and of forbidden sexual relationship. It says this: If a man marries a woman and has marital relations with her, and then if she becomes displeasing to him because he has found in her something improper, and he writes for her a bill of divorce and puts it in her hand and sends her forth from his house, and she goes forth from his house and in time becomes the wife of another man, and this second husband then conceives a dislike for her and also writes a bill of divorce for her and puts it in her hand and sends her forth from his house, or if this second husband, who had married her, dies, then her first husband who had divorced her, may not remarry her. So far the *mišpaṭ* proper. What follows in v. 4aβb is unquestionably the work of the Deuteronomic editor who incorporated this pre-Deuteronomic *mišpaṭ* into its present place in this code.

---

[194] 23.1 is unquestionably a late insertion, attracted to this particular place because it too deals with a forbidden marital or sexual relationship. The influence of H, or at least of H legislators, is readily discernible here in both style and content; and the law is certainly not a *mišpaṭ*.

For that this *mišpaṭ* is unquestionably of pre-Deuteronomic origin is proved by the fact that its content is cited by way of illustration in Jer. 3.1.[195] And while Jer. 3.1 is not as detailed as

---

[195] This is undoubtedly the implication of the otherwise altogether meaningless לאמר at the beginning of the v. Seemingly the word stands entirely without any government or connection. For this reason most commentators would regard it as a gloss and omit it, particularly since it is missing in most of the versions. It is, however, much simpler to regard it as original here, and then to account for its omission from the versions by the assumption that they failed to appreciate the full implication of the word here and so naturally regarded it as superfluous and so omitted it, than to regard it entirely as a very late and meaningless gloss, which crept into MT so very late that it did not affect the versions which reflect the older and more original text. Here לאמר is undoubtedly equivalent to "It has been said" (cf. Matt. 5.31, 33, 38, 43; Luke 2.24; 4.12), and implies that what follows is a quotation from some older source. (More frequently quotations, particularly from the Torah or the later canonical writings, are introduced by "As it is written, etc." cf. Josh. 8.31, 34; 23.6; I Ki. 2.3; Dan. 9.13; Ez. 3.2, 4; 6.18; Neh. 8.14; 13.1; *passim* in the N.T.; cf. also the Rabbinic ככתוב. The use of לאמר here instead of ככתוב or something corresponding to this may perhaps reflect an earlier method of citing a quotation.)

The fact that לאמר here unquestionably indicates that the prophet is quoting from an older source is very significant. Scholars are agreed with practical unanimity that this particular address of Jeremiah comes from the earliest period of his prophetic activity, probably from the year 626–625. In such case it is obviously older than the oldest stratum of Deuteronomy, at least in the form in which for the first time it became publicly known and subject to quotation, even by the prophet, in 621 B. C. It follows from this cogent fact that Jeremiah must have quoted this *mišpaṭ*, not from this passage here in Deuteronomy, even if we could assume that it is a part of the oldest stratum of the book, but from some older source; and this older source could have been, of course, only an old, pre-Deuteronomic *mišpaṭ*-corpus, such as we have posited. (Cf. also his obvious reference in 2.34 to the *mišpaṭ* in Ex. 22.1).

Furthermore, most commentators, following the majority of the ancient versions (cf. Volz, *Der Prophet Jeremia*, in Sellin, *Kommentar zum Alten Testament*, X, 35), would emend הארץ to האשה on the assumption that the is Deut. 24.1–4, there is ample reason for believing that the prophet had in mind this *mišpaṭ* itself, although, of course, quoted, not from here, but from an older, pre-Deuteronomic *mišpaṭ*-corpus, and not merely an older custom or practice of which this *mišpaṭ* is the expression. There is, however, no need to suppose that the wording of the *mišpaṭ* with which the prophet was acquainted contained also what we now find in v. 4aβb. V. 4b expresses an idea which we have found to be characteristic of the point of view of the post-exilic Deuteronomic editors, viz. that of the defiling of the land through the disregard of the provisions of the *mišpaṭ*, so that Yahwe's continued residence therein would be rendered impossible. And, quite obviously, something similar to this is the import of v. 4aβ.[196]

original read merely 'הא. Certainly this is ingenious and apparently has much in its favor, for the present reading of MT, הארץ, makes no sense whatever in this connection. Actually, however, even with the reading האשה aγ adds little to the thought, unless we may interpret חנף in the sense "to be forbidden because defiled." Moreover, the fact that in vv. 2b and 9a חנף is used again in connection with הארץ seems to render this emendation improbable. Actually v. 1b could follow logically and without the feeling that anything was missing directly upon v. 1aαβ. 1aγ would then be a gloss inserted under the influence of Deut. 24.4b. Also vv. 2b–3a and 9a might likewise be regarded as glosses, emanating from the same hand as v. 1aγ. In fact vv. 2b–3a and 9a seem very definitely to interrupt the development of the thought. הארץ in v. 1aγ is then in all likelihood original, and האשה of the versions represents a late attempt to reinterpret in what seemed a fitting manner a passage which these translators did not fully understand and which appeared to them to express an incongruous thought.

These considerations are of some importance for this study. We have contended that those passages which follow upon the Deuteronomic *mišpaṭim* and which seek to guard against the possible defilement of the land are late, post-exilic editorial additions to the original *mišpaṭim*. But Jer. 3. 1aγ, 2b–3a and 9a express this very idea quite clearly and forcibly. If these passages were original here and the actual utterances of the prophet it would tend to disprove our contention that the entire idea of the defilement of the land is post-exilic. It is significant therefore that on quite independent grounds we have established the strong probability that they too are late, post-exilic glosses, inserted here no doubt to bring the thought of this passage into harmony with established, post-exilic doctrine.

[196] The expression תועבה here used is interesting indeed, and not without prime significance for our study. It is quite a characteristic Deuteronomic expression. In the Biblical literature earlier than Deuteronomy and Jeremiah

When we consider what remains after the separation of this obviously editorial material, viz. the *mišpaṭ* proper, we find that it presupposes certain old and established practices with regard to divorce procedure in ancient Israel. Apparently the husband had full right of divorce, particularly if he found cause therefor in his wife's irresponsible and perhaps impliedly immoral conduct.[196a] Whether a woman could be divorced without cause is not

---

it occurs only four times (Gen. 43.32; 46.34; Ex. 8.22; Is. 1.13). It is used with increasing frequency in Deuteronomy, Jeremiah, Ezekiel and post-exilic literature. It seems to have connoted originally an act of essentially ritual character originating in the cult of some foreign deity, and which is therefore repugnant to Yahwe; therefore the secondary verb-formation of the noun, used in the *Pi'el*, "to regard some one or something as תועבה," as therefore displeasing to Yahwe and in consequence denied admission into or use by the religious community of Yahwe. Eventually, notably in Proverbs and in a few passages in Deuteronomy, as for example here and in 25.16, the term is applied to acts ethically improper, and therefore displeasing to Yahwe. Naturally it is difficult not to regard all such passages in which the word has this ethical connotation as late. In this particular passage this conclusion would apply, of course, only to the obviously editorial addition in v. 4aγ. It should be noted too that strong though the term undoubtedly is, it seems not to be as strong and absolute as the phrase הרע בעיני יהוה, "that which is evil in Yahwe's eyes"; for, as we have seen, in almost every case the person who does "that which is evil in Yahwe's eyes" is put to death, while the person who commits a *to'ebah* is represented merely as being hateful to Yahwe. Only once is the death penalty prescribed for the person who commits a *to'ebah* (Lev. 20.13, where presumably the crime described has not only an ethical, but also a distinctively ritual character, with reference no doubt to the practices of the *galli*, the devotees of the Syrian mother-goddess).

[196a] Actually it is by no means certain that ערות דבר implies something quite as strong as this. The expression is used in only one other Biblical passage, Deut. 23.15, a passage which is demonstrably late post-exilic. There it seems to connote "something disgusting or defiling," disgusting or defiling both because of its inherent, repulsive character and also because it is associated in some way with the condition of physical nakedness (ערוה from the stem ערה, "to be naked"). Here in 24.1 the expression may therefore mean nothing more than "something disgusting, something which provokes repulsion." Certainly it need not connote something as strong as "immoral conduct," although, on the other hand, it is by no means impossible that it should have connoted this. Seemingly Matt. 5.32 interprets Deut. 24.1–4 as implying that ערות דבר meant only adultery, and that therefore adultery alone constituted ground for divorce. This interpretation is, however, certainly incorrect, since Deut. 22.22 prescribes specifically the death penalty for adultery. Assuming

indicated here, but this may perhaps be inferred from Ex. 21.7–11. The wife apparently had no right of initiative in divorcing her husband.[197] Three acts seem to have been essential to the formal ceremonial of divorce; the husband had to write a bill or declaration of divorce,[198] he had to himself put it into his wife's hand, and he had to bid her or cause her to leave his house. Seemingly without the performance of all three of these acts the divorce was not valid. All this is clearly old, established procedure which this *mišpaṭ* takes for granted, and for which therefore it does not need to legislate.[199]

The *mišpaṭ* itself deals only with one question, viz. can a man remarry his divorced wife, who has in the meantime been married to a second husband and whose second husband has either died or has himself divorced her. The answer is that he may not remarry her.[200] It is difficult to determine the age and the social conditions which might have called forth this particular law.[200a]

---

the original legislative and literary unity of these pre-Deuteronomic marriage-*mišpaṭim*, it follows that ערות דבר here can, at the very most, imply only some improper or immoral conduct of less magnitude than adultery, yet sufficiently heinous to justify divorce. But it must be borne in mind that equally ערות דבר here may imply no more than the development of some physical quality or defect on the part of the wife which renders her repulsive to her husband.

In all likelihood, however, the entire clause, כי מצא בה ערות דבר, is not original in the *mišpaṭ*, but is rather a late gloss. It is altogether unessential to the thought of the *mišpaṭ*, but seeks rather to explain or motivate the *mišpaṭ* in the manner which, we shall see, was characteristic of the post-exilic, Deuteronomic legislators and editors.

[197] In Ex. 21.11 also the implication with regard to the practical procedure is much the same, viz. that the slave-woman gained her freedom only if she could prove, no doubt before the proper legal authorities, that her husband-master did not fulfill all his marital duties. Here, quite obviously, the woman had to take the initiative in bringing the charge against her husband-master, but the award of freedom came from him.

[198] For the bill of divorce cf. Is. 50.1; Jer. 3.8; Matt. 5.31f.; Mark 10.4.

[199] Contrary to the opinion of quite a number of commentators.

[200] Just the opposite to the established practice of Islam, as recorded in the Koran (Sura 2, 229f.).

[200a] Perhaps a little light may be shed upon the question of the social background of this *mišpaṭ* if we ask just what purpose did it serve and whom was it designed to protect. Offhand it would seem that the *mišpaṭ* was designed to protect the woman against too hasty and unreasonable divorce by her

Comparison of this law with the marriage relations existing between David and Michal[201] and those between Hosea and his adulterous wife[202] have been made by scholars. But certainly not the first case and perhaps also not even the second offers a sufficiently close parallel to the condition dealt with in this *mišpaṭ*[203] to warrant any positive or far-reaching conclusions.

husband, by warning him that in case she thereupon married a second husband remarriage with her would become forever impossible. But this can scarcely have been the purpose, for the *mišpaṭ* interposes no obstacle in the way of immediate remarriage or remarriage at any time, just so long as the wife has not yet contracted a marriage with a second husband. It may be that the *mišpaṭ* was designed to imply that such a remarriage would have been regarded as incestuous, for through the divorce and the subsequent second marriage the woman had rendered herself *ṭame'*, i. e. eternally taboo or forbidden to her first husband. Just this is the implication of אחרי אשר הטמאה, even though the phrase be certainly RD. But granting that this may well have been the idea which the post-exilic age, with its highly refined system of forbidden sexual and marriage relations (cf. Lev. 18 and 20) put upon this *mišpaṭ*, as the just cited RD gloss seems to indicate, it does not follow by any means that this must have been the original import and purpose of the *mišpaṭ*. It may well be that the person whom this *mišpaṭ* was designed to protect was the second husband; for we may readily conceive that cases may have arisen frequently where A in a moment of anger divorced his wife, even though normally he loved her dearly, and that she in turn, in resentment against A, would speedily contract a second marriage with B. But in time the old love between A and his former wife might reassert itself and they desire reunion. B, the second husband, was the obstacle to this, and unless B was willing to divorce his wife for this purpose, remarriage with A would have been impossible. Not at all improbably therefore, in order to achieve this end, the wife might easily have come to behave towards B in such manner that continued living with her would have been extremely unpleasant and difficult, and B would thus be forced eventually to divorce her. Or not impossibly even A and his former wife might have conspired and contrived to have B put out of the way in some manner. It is quite plausible that it was just in order to put a stop to such possible acts or crimes as this that this *mišpaṭ* was originally framed. Cases such as this are by no means without parallel in Oriental history and literature.

[201] I. Sam. 18.17ff.; 19.11ff.; II Sam. 3.13–16; 6.20–23.

[202] Hos. 1–3.

[203] The former was a case of *beena* rather than of *ba'al* marriage (cf. my "*Beena* Marriage [Matriarchat] in Ancient Israel and Its Historical Implications," *ZAW* 6 [new series] [1929], 97). The latter case is too vague and uncertain in its details, and seems, moreover, to have been primarily a case of adultery.

Rather from the internal conditions of this *mišpaṭ* must the attempt to determine its date be approached.

It is clear that this *mišpaṭ* presupposes a detailed, long-established and conventional procedure or ceremonial of divorce, such as could have eventuated only after a fairly long and complex evolution of the institution of *ba'al* marriage in Israel.[204] As I have elsewhere endeavored to show,[205] this type of marriage became dominant in Israel, and therefore this evolution could have become positive and systematic, only from the time of David on. In all likelihood quite some time must have been required for this established divorce procedure to evolve and to become conventionalized in the manner assumed in this *mišpaṭ*. Manifestly, however, the practice had become firmly established and this particular *mišpaṭ* had been formulated before the time of Jeremiah. Inasmuch as this *mišpaṭ* represents the final stage in the evolution of this complex divorce procedure and legislation, it is more likely the product of the latter half of the period intervening between David and Jeremiah than of the first half. There is, however, no necessity whatever for assuming that Jeremiah was acquainted with this law from having read it here in its present position in Deuteronomy, and for inferring from this that this *mišpaṭ* must have been an integral part of the original

---

However, the fact that Jer. 3.1ff. applies this *mišpaṭ* to a case where the wife does not contract a second marriage but merely commits adultery with lovers other than her husband may perhaps justify the correlation of this *mišpaṭ* with Hosea's marriage. Hosea's remarriage, or at least his taking back of his faithless wife with a view to possible eventual remarriage, even though she had had relations with other men during the period of her divorce, would be then in direct contradiction to the provisions of this *mišpaṭ*. This would mean then that this *mišpaṭ* could have evolved only in the period between Hosea and Jeremiah. This conclusion agrees completely with that which we draw upon the basis of more general considerations, even though this correlation of this *mišpaṭ* with Hosea's remarriage is, as has been said, rather precarious.

[204] The so-called Old Oriental law codes offer no parallel to this practice of divorce whatever. Jirku (*Altorientalischer Kommentar zum Alten Testament*, 122) misunderstands the import of the law completely when he suggests comparison between it and CH, §§138, 139; CA, §§37–38; SFG, §6. Seemingly the practice recorded here is a characteristic and unique Israelite institution.

[205] "*Beena* Marriage (Matriarchat)" etc.

nucleus of Deuteronomy. The prophet must have been acquainted with this *mišpaṭ*, either because it had become the established practice of his day, or, what is more probable, from having known of it in the original pre-Deuteronomic *mišpaṭ*-corpus in which it stood at first, and from which it was borrowed and eventually inserted by post-exilic Deuteronomic editors, with characteristic editorial additions, into its present position. Whether in this original pre-Deuteronomic *mišpaṭ*-corpus this *mišpaṭ* stood in close relationship with the *mišpaṭim* in Deut. 22.13–29 and Ex. 22.15–16, which likewise deal, as we have seen, with certain questions of marriage relations, it is impossible to say with certainty. It is, however, altogether probable; and this assumption may perhaps explain the inclusion of this particular *mišpaṭ* in Deuteronomy, and likewise its present position there as the very next *mišpaṭ* after the one in 22.28–29.[206]

Somewhat related to this last *mišpaṭ*, and in fact to the entire group of marriage-*mišpaṭim*, is the interesting *mišpaṭ* found in 25.5–10. It says this: If (two) brothers dwell together and one of them dies without leaving a son, the widow of the dead brother may not become the wife of a strange man (i. e. one outside the family of the deceased husband); her brother-in-law shall go in unto her and take her as his wife and perform toward her the duty of a brother-in-law; and her first-born male child shall go by the name of the deceased brother, so that his name may not be blotted out from Israel. But if the brother does not wish to take his sister-in-law, and his sister-in-law goes up to the gate, to the elders, and says, "My brother-in-law refuses to establish for his brother a name in Israel; he is unwilling to perform the duty of a brother-in-law towards me," and if the elders of his town summon him and confer with him, but he takes a firm stand and says, "I do not wish to take her," then his sister-in-law shall draw near to him in the presence of the elders and draw his sandal from off his foot and shall spit in his face, and she shall formally declare, "So shall be done to the man who will not build up his brother's house;" and he shall be called in Israel "the house of him whose sandal was drawn off."

---

[206] This would imply in turn that the whole of Deut. 23, which now intervenes between the two *mišpaṭim*, is probably a late, though by no means necessarily unified, editorial insertion into its present place, a later editorial process than the incorporation of the older *mišpaṭim* into Deuteronomy. Detailed analysis of the content of Deut. 23 tends to confirm this conclusion. Into this rather complex question, however, we may not enter here.

This *mišpaṭ* is exceedingly interesting in many important respects and has been frequently commented upon. The institution with which it deals, viz. levirate marriage, was by no means peculiar to Israel, but has been practiced by diverse peoples dwelling in all parts of the world and living upon varying planes of cultural and social evolution.[207] Nor even among Semitic peoples was the practice confined to Israel alone. It was known to the Assyrians also and is dealt with in considerable detail in the Old Assyrian law code.[208] It was likewise known to the Hittites, although apparently not practised extensively, and was definitely regulated by a specific law in the Hittite law code.[209] The Samaritans too seem to have practiced levirate marriage, but only when the woman was betrothed and the marriage had not yet been consummated.[210] It is likewise known to and practiced, though not extensively, by the present-day Bedouin.[211]

---

[207] Westermarck, *The History of Human Marriage*,^{5} III, 207–221; Scheftelowitz, "Die Leviratsehe," *ARW*, 18 (1915), 250–256.

[208] Cf. Jirku, *op. cit.*, 123; Ring, *op. cit.*, 40–49.

[209] Cf. Jirku, *ibid.*; Ring, *ibid.*, 137ff.

[210] Cf. *Kiddušin*, 75b–76a. This was based upon a peculiar and incorrect exegesis of the word החוצה in v. 5. According to the Talmud the Samaritans are said to have interpreted this word as an adjective modifying אשת המת, and the entire expression, "the wife of the dead man who was outside" as meaning the woman who had been betrothed, but whose husband had died before the marriage had actually been celebrated and consummated, who had therefore remained "outside." It is by no means improbable that the Samaritans did practice this peculiar type of levirate marriage, for we have seen that it was not without parallel in the practice of the ancient Semites, particularly the Assyrians. But if so, it is far more likely that it was an ancient marriage custom among the Samaritans, of somewhat obscure origin, than that it was based upon a forced and artificial exegesis of the Biblical law. This latter probably represents the attempt of the Rabbis to account for the Samaritan practice in accordance with the principles of their own legal dialectic. Jacobs (in *JE*, VIII, 46a) ascribes the same custom to the Karaites.

[211] Of this institution among the Bedouin Burckhardt says (*Notes on the Bedouins and Wahábys*, 64), "If a young man leaves a widow, his brother generally offers to marry her; custom does not oblige either him or her to

But unquestionably one phase of the institution as recorded in the Biblical *mišpaṭ* was peculiarly and characteristically Israelite. Among the Assyrians and Hittites in ancient times and the Bedouin of the present day levirate marriage is clearly only a matter of inheritance, a process by which a piece of property of more or less value, and which has been acquired through a definite act of purchase, is retained in the family and is not suffered to be lost or forfeited through the mere accident of the death of that particular member of the family who had either acquired the property himself or for whom it had been acquired by some other member of the family, in most cases the father of the dead man.[212] The piece of property, viz. the widow of the deceased man, has value for the family in general and for the heir in particular both as a means of satisfying sexual desire and as a potential worker in the family's behalf. But coupled with this seems to be in most cases the consideration that in her turn the woman has certain rights also, and in particular the right of a proper amount of sexual enjoyment from the brother or particular relative who takes the place of the dead husband; hence the legislation in the various Old Oriental codes to determine precisely who is to inherit the widow and use her as his wife.

The Biblical legislation motivates the institution quite differently. It is no longer a mere matter of inheritance, but of perpetuating in Israel the name of the dead brother through the first male child born to the widow from her union with her brother-in-law. This is an altogether new motif, not without occasional, though not frequent, parallels in the marriage practice of other, non-Semitic peoples,[213] but entirely without parallel in Semitic practice, at least so far as present evidence indicates. It is this motif which is characteristically Israelite, and which indicates

---

make this match, nor can he prevent her from marrying another man. It seldom happens, however, that she refuses, for by such a union the family property is kept together"; cf. also Musil, *Arabia Petraea*, III, 426; Jennings-Bramley, "The Bedouin of the Sinaitic Peninsula," *JPEF*, 1905, 218.

[212] According to CA, §33, a widow who has a son should marry her father-in-law (cf. Ring, *op. cit.*, 57). This was obviously to protect the interests of her son and to keep a valuable piece of property from passing to another family. In this it paralleled the levirate marriage.

[213] Westermarck, *op. cit.*, 216f.

that the institution of levirate marriage must have had an independent development in Israel.

Moreover, two Biblical narratives tend to throw considerable light upon the institution and its cultural evolution in Israel, and also, in consequence, upon the relative age of the specific *mišpaṭ* in Deut. 25.5–10. They are the stories of Judah and Tamar in Gen. 38 and of Ruth and Boaz in the Book of Ruth.

Of these the story in Gen. 38 is recognized by all scholars as being of considerable antiquity.[214] That story has as its framework the following facts, (1) Judah, living with his three sons as one household, acquires as a wife for his oldest son Tamar, the daughter of a man living in the vicinity;[215] (2) when this oldest son dies, Tamar is given to the second son; (3) the first child born from this union would be regarded as the child, not of the actual physical father, but of the dead first husband; (4) since the third brother is not yet sufficiently grown, presumably for sexual purposes, and therefore is not yet ready to become in turn the husband, or at least the consort, of Tamar, she returns to her father's house to wait until this third son reaches the proper age; (5) when the time comes, this third son is not given to Tamar by his father, through fear on Judah's part that he too might lose his life because of his association with Tamar;[216] (6) Tamar accordingly helps herself by playing the harlot and procuring for herself intercourse with her father-in-law; (7) when all the facts come to light Judah admits that, instead of having done a shameful thing and committed an act of incest, Tamar has acted more correctly and properly and within her rights[217] than he. These are the essential facts in this narrative.

---

[214] Although, not only in its literary form but also so far as the content of the narrative is concerned, probably not of as great antiquity as is usually supposed; for it is clear that the institution of levirate marriage presupposes *ba'al* and not *beena* marriage; cf. below, p. 164.

[215] V. 11. Note that after the death of Judah's second son and her second husband, Tamar returns to her father's house to wait until the third son should become sufficiently mature to become her husband. Presumably it would have been contrary to custom, and might even have been regarded as indecent, for her to remain in the house of her father-in-law during this period. But, quite significantly, even though in her father's house, Judah retains full authority over her and can condemn her to death. But her father's house is sufficiently close at hand for her to know when he goes out to shear his sheep and for her to quickly disguise herself and meet him while yet on the way, and likewise for her to return to her father's house and resume her widow's garb while he sends to the pasture for the required kid.

[216] Cf. somewhat the same motif in Tobit 6.10ff.

In this connection a provision of the Hittite law code (II, §79) governing levirate marriage is particularly significant. It is to the effect that in case the deceased husband leaves no brother to perform the duty of brother-in-law to his widow, then his father shall take the woman for this purpose. Likewise a provision of the Old Assyrian law code (§43) is of significance in this connection, viz. that the brother or next male kin must be at least ten years old before he becomes responsible for the duty of levirate marriage. It is clear that both these conditions or something closely related to them are presupposed in the Judah-Tamar story. Apparently Shelah, the third brother is not yet ten years old, or whatever may have been regarded as the age of maturity in ancient Israel, at the time of his two brothers' deaths. And apparently too the same principle obtained in Israel at this time as among the Hittites, that if no brother was left to perform the duty of levirate marriage with the widow, this duty devolved upon the father of the dead man. Such a union between father-in-law and daughter-in-law was regarded, not only as not incestuous, but as commendable in that it represented the discharge of a duty, and one which was obviously held to be of considerable weight. Unquestionably it was just because of this consideration that Judah was forced to admit that Tamar was more within her rights, and had been guilty of no act of impropriety in bringing him, through trickery, to consort with her.[218]

Apparently in this story, which seemingly reflects the oldest practice of levirate marriage in ancient Israel, a certain parallelism exists with the Hittite practice, in that marriage with the father-in-law, after the death of the second brother, and while the third brother was still a minor, was regarded as altogether proper and in compliance with custom. And likewise a certain parallelism with the Assyrian practice exists in that the youngest brother had to reach a certain age, no doubt the age of puberty, before his union with his brother's widow could be effected. This last provision is, however, altogether natural, and was practiced no doubt, whether consciously or unconsciously, among almost all peoples among whom the institution of levirate marriage obtained. There is accordingly no need whatever to assume Assyrian influence of any kind in this particular.

---

[217] V. 26, צדקה ממני.

[218] V. 26b is in all likelihood a gloss and reflects the social and moral point of view of a later age.

But the distinctively Israelite element in the practice as recorded in Gen. 38 is the fact that the first male child born from the union of the widow with her brother-in-law is, in theory at least, regarded as the child of the dead husband and, although it is not explicitly stated in this narrative, perpetuates the dead man's name in Israel. Unquestionably the institution of levirate marriage practiced for this purpose is directly related to some aspect of the cult of the dead. It is needless to speculate here upon just what this might have been. Obviously it was the performance of some duty to the spirit or ghost of the dead man which, it was believed, only a son, and no other relative, no matter how close, could perform, or at least perform adequately and properly. Clearly the institution presupposes not only *ba'al* marriage but also the social phenomenon closely related to *ba'al* marriage, kinship traced through the father rather than through the mother. For this reason too, we may not presume that the institution was of all too great antiquity in Israel. It can, at the very earliest, date only from that period when *beena* marriage and mother-kinship were regularly beginning to give way to *ba'al* marriage and father-kinship. And we know too little about the early social evolution of the Israelite tribes to formulate any certain conclusions. This process may well have begun in the pre-Canaanite period of desert sojourn and semi-nomadic life; or equally it may have resulted from contact with the Canaanite inhabitants of Palestine. We know only that the evolutionary process seems to have reached its climax with David and that from then on *ba'al* marriage and father-kinship, with all their implications and resultant institutions, seem to have become the normal thing in Israel.

Moreover, it is clear that in the stage of the evolution of the social institution of levirate marriage, as pictured in Gen. 38, the second brother has as yet no alternative. He must conform to the practice whether he will or not. The duty of intercourse with the sister-in-law is so imperative that when all else has failed and Tamar helps herself by tricking her father-in-law and becoming pregnant by him, he admits that she has done her duty, or at least has acted within her rights, while he has been derelict. Obviously as yet the institution knows of no option on the part of the brother-in-law.[219]

But when we turn to Deut. 25.5–10 conditions have changed completely. The brother-in-law apparently has complete option as to whether he will discharge this duty or not, although, it is clear, the social consciousness of the age still favors the observance of the institution as a pious duty, and tries to enforce this end by bringing a certain pressure to bear upon the brother-in-law. Nevertheless, in the end the decision rests with the brother-in-law entirely. And a formal way, through the performance of a prescribed ceremony, is provided for his avoidance of the ceremony, should he so desire. This reflects obviously a later stage of the evolution of the institution.

Moreover, careful examination of the *mišpaṭ* brings to light a number of interesting and significant facts. First, the *mišpaṭ* falls definitely into two distinct parts.[220] The first part, vv. 5–6, records in a quite general way the oldest and basic form of the institution, precisely as reflected in Gen. 38. It prescribes absolutely that the brother-in-law must submit to the performance of the duty of levirate marriage and raise up a son to his dead brother, who shall go by the latter's name, i. e. be recognized in the most literal sense as his son. The second part of the *mišpaṭ*, and actually the *mišpaṭ* proper, vv. 7–10, deals seemingly with the question of the evasion of the performance of this duty by the brother-in-law and the ceremony by which this evasion is formally legalized. Actually, however, something more than this is involved in this section of the *mišpaṭ*.

---

[219] This too is probably the implication of Onan's act (v. 9); for had he had the option of refusing to take his sister-in-law, there would have been no occasion for his procedure.

[220] Or actually three distinct parts; cf. below, p. 184.

The *mišpaṭ* says specifically that the first act in the procedure by which the brother-in-law evades the performance of this duty is that the widow must go up before the court of elders sitting, as was customary, in the town gate, and there make formal declaration that her brother-in-law had refused to perform the duty of levirate marriage with her. The import of this is clear. The performance or non-performance of this duty was naturally a matter of strictest secrecy, known only to the two of them. And of course, if the brother-in-law had no desire to perform this duty, there was obviously no need nor occasion for him to make the matter public. He could refuse absolutely to perform the duty and apparently no power, legal or social, could compel him. This consideration makes it clear that actually the basic purpose of this *mišpaṭ*, or rather of this portion of it, is not at all that suggested above, to provide the manner by which the brother-in-law might formally evade the duty of levirate marriage. This possibility of evasion existed in his now recognized right to refuse in private to his sister-in-law to have anything to do with her. Moreover, if the purpose of this *mišpaṭ* was the protection of the brother-in-law from the necessity of performing a formal duty disagreeable to him, the first condition thereof would hardly have been to compel the sister-in-law to comply with a provision which must have been extremely distasteful and humiliating to her, viz. to voluntarily take the initiative and go before the legal authorities of the town and make formal charge of neglect of duty against her brother-in-law in regard to a matter of extreme privacy and delicacy. This consideration suggests that after all the *mišpaṭ* is designed to protect, not the brother-in-law, since he needed no protection in the matter, but the sister-in-law.

And unquestionably she did need protection under these circumstances. For if her brother-in-law refused absolutely to proceed with the duty of levirate marriage, her lot was unhappy in the extreme.[221] She would then be in the position of a woman dependent upon the grace of a brother-in-law none too well disposed toward her, with no hope of offspring and the protection which that would bring in time, with a hopeless old age staring her in the face, and condemned to the lot of a drudge in her brother-in-law's household. Her lot was in no wise better, and in many respects worse than that of a slave. Obviously she needed protection; and obviously too, if, after waiting a reasonable time, her brother-in-law manifested no favorable intentions towards her or definitely refused to perform the brother-in-law's duty to her, she might well resort to the last, desperate means of at least freeing herself from his authority and securing the right either to return to her father's household or to dispose of herself as seemed to her best,[221a] viz. to make formal declaration before the judicial authorities of the town that her brother-in-law had refused positively to perform his duty towards her. It was, of course, an extreme measure; but for self-protection in a desperate situation it might well be resorted to.

---

[221] For the unhappy lot of the widow in ancient Israel and the consequent need of commending her, together with the orphan, to the consideration and care of the general public, cf. Ex. 22.21f.; Deut. 14.28f.; 16.11, 14; 24.17–21; 26.12–15, and Ring, *op. cit.* 56. Ring suggests that this may have been due to improper customs and laws of inheritance, just as among the Assyrians, which left the widow totally unprovided for.

It is clear too that the next step in the legal procedure was for the elders of the town to summon the brother-in-law and ascertain if the charge was true. Moreover, it is clear that the elders, in speaking with the brother-in-law, directed their efforts toward persuading him to fulfill his duty toward his brother's widow. Manifestly public opinion, the mores of the time, still favored the discharge of this duty and still regarded it as a pious, commendable act which ought to be performed. But beyond persuasion even the elders had no power of compulsion. The brother-in-law still had full right to declare that he would not enter into this relationship with his sister-in-law. It was immaterial what influences or considerations prompted him; his right to refuse could not be gainsaid. Then nothing remained but to proceed with the formal ceremony by which, so the actual import must have been, the widow acquired her freedom from the authority of her brother-in-law.

[221a] An illuminating illustration from modern Palestinian life of widows having the right to dispose of themselves is furnished by Jaussen, *Naplouse*, 60. In ancient Israel a divorced woman was in this respect on a par with the widow; and from the *mišpaṭ* in 24.1–4 it is clear that a divorced woman had full right to contract a second marriage upon her own initiative. In other words, it would seem from this that in ancient Israel, at least under certain conditions and in a certain, rather late period, both widows and divorcees had full right of self-disposal.

As stated here, the ceremony consisted of two separate acts; (1) the widow drew the sandal from off the foot of her brother-in-law, and (2) she spat in his face; in connection with the performance of one or both of these acts she recited the formula, "Thus shall be done to the man who will not build up his brother's house." Thereafter that man was known by the impliedly opprobrious title, "house of the man whose sandal was drawn off." Now careful thought shows that there are many things out of joint in this procedure. Apparently the name, "house of the man whose sandal was drawn off," implies a certain measure of disgrace thought to attach to the brother-in-law because of his refusal to perform his duty. But if so, we would expect to find the term איש חלוץ הנעל, "the man whose sandal was drawn off," and not בית חלוץ הנעל, "house of the man whose sandal was drawn off," unless it is meant to imply that this term of opprobrium adhered to the entire household of the brother-in-law, perhaps even for several generations. But this last is indeed difficult to believe.

Moreover, if the basic purpose of the act of drawing off the brother-in-law's sandal and applying this name to him and his household was to disgrace him publicly, with perhaps the subordinate idea that rather than submit to this disgrace he would consent to perform his duty towards his sister-in-law, then why did the formula recited ignore the other ceremony of spitting? For unquestionably this was a real expression of the formal contempt which the public was supposed to feel for a man who had refused to perform an important, even a basic social duty.[222] Certainly the title, "the man into whose face a woman (or "his sister-in-law") had spat," would have been more offensive and condemning than "the man whose sandal was drawn off."[223]

---

[222] In fact, according to Pedersen (*Der Eid bei den Semiten*, 96f.) the purpose of the spitting in the face was to bring a curse upon the recalcitrant brother-in-law.

[223] Certainly in ancient Israel spitting in a person's face was a ceremony of more than ordinary opprobrium and had, at least occasionally, even a defiling effect comparable to that of leprosy, purification from which required

Furthermore, from Ruth 4.7 we learn definitely that the drawing off of the sandal was in no sense an act or sign of disgrace, but was from of old rather the sign or symbol of the conclusion and sealing of a commercial transaction by which property passed from one hand to another. And if so, then just here the act of the widow's drawing off the sandal of her recalcitrant brother-in-law could have only one meaning, viz. that by the performance of this particular ceremony in the presence of the elders of the town and the people present she had acquired her freedom and full control of her person from her brother-in-law; no longer did he have any authority over her, but she was now free to dispose of herself as she might choose, to seek another husband and have children by him, or to return to her own family, or to sell her services as a hireling, as she herself would decide. Unquestionably this must have been the real import of the ceremony of drawing off the sandal, and particularly of the fact that the widow drew it off, instead of the brother-in-law himself drawing it off and handing it to his sister-in-law, as the practice is in Ruth 4.7.[224]

the full customary seven-day period; cf. Num. 12.14; Is. 50.6; Job 30.10. Unquestionably therefore in this entire procedure the rite of spitting in the face must have actually had deep significance, greater undoubtedly than that of drawing off the shoe, which, as we shall see shortly, actually had an altogether different signification, and one to which little, if any, opprobrium could have attached. It is therefore strange indeed to find the rite of spitting in the face ignored completely in the implied title of reproach given to the recalcitrant brother-in-law, and only the altogether inoffensive rite of drawing off the sandal referred to. In all likelihood this is the result of editorial revision, and originally some other term of reproach, such as האיש אשר ירקה (יבמתו) בפניו, "the man into whose face a woman (or "his sister-in-law") spat," was applied and was recorded here. For evidence of late, editorial revision of this section of the *mišpaṭ*, cf. below, p. 184. In this connection it is noteworthy that Targum Yerushalmi must have felt the insufficiency and ineptitude of the name applied to the recalcitrant brother-in-law, recorded in MT, for to it it adds the amplifying statement "and who nullifies the commandment of the duty of the brother-in-law." (My attention was called to this fact by my colleague, Dr. Sheldon H. Blank.)

[224] For further evidence of the symbolism of the sandal and of the ceremony of drawing it off in connection with marriage among the Arabs, and particularly of the transfer of property rights in the woman through this act, cf. the fact cited by Robertson Smith (*Kinship and Marriage in Early Arabia*,[1] 269) that *na'l*, "shoe," has also the meaning "wife," and likewise the following

Apparently only the ceremony of spitting in the face carried with it any opprobrium whatsoever. It must have been to this last act alone that the formula recorded in Deut. 25.9b referred. And obviously too the confused statement in v. 10, with the altogether inappropriate name to be applied to the brother-in-law and with בית appearing where the context suggests that איש or some similar word was expected, is an editorial emendation or addition by some one who, living at a late date, sought to reinterpret the old ceremony and give to it an entirely new signification.

Moreover, one very essential and explicit statement is missing altogether, without which the *mišpaṭ* is quite incomplete, viz. that by the performance of the ceremony of drawing off her brother-in-law's sandal the widow acquired her freedom. Undeniably this is the real import of this last half of the *mišpaṭ*; and without a definite statement to this effect the *mišpaṭ* halts badly. The solution of the problem of this great confusion is probably this, that v. 9aβ (וחלצה נעלו מעל רגלו) and v. 10b are the result of late, editorial revision, v. 9aβ being an insertion and v. 10b a substitution for the term of disgrace applied to the brother-in-law which originally stood here and which must have referred in some way to the rite of spitting in the face. Before this late, editorial revision the *mišpaṭ* represented a definite attempt to enforce, in accordance with established and persistent social convention, an institution of marriage which was largely

custom, recorded by Burckhardt (*op. cit.*, 64f.) and also cited by Robertson Smith, "A man has an exclusive right to the hand of his cousin; he is not obliged to marry her, but she cannot, without his consent, become the wife of any other person. If a man permits his cousin to marry her lover, or if a husband divorces his runaway wife, he usually says, 'She was my slipper, I have cast her off'" (cf. also Jaussen, *Naplouse*, 32, note 1; 241). Whether a similar symbolism in the use of the sandal is inherent in the following custom (Sprenger, *Die Post und Reiserouten des Orients*, I, 132) is not clear; among the Bahymya, a small tribe inhabiting the hinterland south of Mecca, if A wishes to marry the daughter of B he asks B for her hand, and then, in case the latter consents, A spends the night with her. If in the morning a sandal is left behind by the suitor, the father knows that A still wishes to marry his daughter; but if no sandal is left, B understands that marriage is no longer desired. For various hypotheses regarding the origin of this custom in Israel, cf. Luncz, *Jerusalem*, III (1889), 173f.; V (1898), 141ff.; Scheftelowitz, *Alt-Palästinensischer Bauernglaube*, 108.

outgrown, and to escape which an all too simple and easy way would have existed for the brother-in-law. The performance of the rite of spitting in the face, however, with the attendant disgrace and the term of reproach resulting therefrom, gave to it an altogether different aspect, and prevented the procedure of repudiation of the widowed sister-in-law from becoming too simple and easy. At a later date, however, by which time the institution had been almost entirely outgrown, and had even come to be forbidden by law, the necessity, or at least the desirability, of erasing from the procedure every implication of disgrace of the brother-in-law was felt, and also of emphasizing the fact that the widow had acquired her freedom from her brother-in-law completely. Accordingly the ceremony of drawing off the sandal was substituted for the rite of spitting in the face, with a resultant modification in the name applied to the brother-in-law in v. 10b. Strangely, however, but none the less in a manner quite characteristic of these editorial processes, the editor inserted the words וחלצה נעלו מעל רגלו, but forgot, or perhaps was reluctant, to omit וירקה בפניו, with the consequent confusion in the meaning of the *mišpaṭ* in its present form.

More minute examination of this *mišpaṭ* in Deut. 25.5–10 establishes beyond all possibility of doubt that already at the time this *mišpaṭ* was formulated the institution of levirate marriage was in process of decay, and had already departed far from the stage of evolution portrayed in the narrative in Gen. 38. For here, it should be noted in the first place, even in the first part of the *mišpaṭ* the duty of raising up posterity to the dead man is limited only to the brother and, it may be inferred from the specific wording, the eventual duty of the father of the dead man, in case there were no brother to function in the designated capacity, is completely ignored. Probably a developing social sense had long before the framing of this *mišpaṭ* taken umbrage at the thought of the father discharging this role and tabooed it as an act of incest.[225] Moreover, an additional restriction is here imposed in that the *mišpaṭ* represents this duty as incumbent upon the brother-in-law only if the two brothers had actually been living together, so that their families really constituted one household.[226] Actually this is the condition represented as obtaining in the narrative in Gen. 38; but the very fact that in Deut. 25.5–10 it is held to be an indispensable requisite to the performance of this duty, seems to indicate a developing tendency to impose a certain restriction upon the practice of levirate marriage. It is clear, however, that the basic purpose of the institution in vv. 5–6 is still what it was in Gen. 38, to raise up posterity for the dead man. In all likelihood the force of the old cult of the dead had not been completely outgrown at the time of the formulation of this first half of this *mišpaṭ*.

---

[225] This may well be the import of Lev. 18.15; 20.12, prohibiting sexual relations with a daughter-in-law.

But careful examination shows conclusively that an altogether different aim and point of view dominate the second part of the *mišpaṭ*, vv. 7–10, particularly in its original form. Not only does this provide, as we have seen, for the protection of the widow in the unfavorable situation in which her brother-in-law's indifference to her places her, but also it is clear that the basic consideration here is no longer that of raising up posterity for the dead man, but is on the verge of becoming merely a matter of inheritance, just as among other Semitic peoples. Seemingly the widow has come to be regarded as the property of her brother-in-law by right of inheritance, and it is from his authority over her, based upon this right, that she seeks to free herself by appeal to the court of elders. Therefore she has the alternative of remaining silent and submitting to her brother-in-law's indifference towards her, and allowing the world to think that he had performed his full duty to her, but that she was barren, or else, what must naturally have been extremely repugnant to her but warranted by her desperate situation, of taking the initiative and bringing formal charge against her brother-in-law before the proper judicial authorities, that he had refused to perform his duty towards her. This situation parallels closely that set forth in Ex. 21.10–11, where likewise the neglected Hebrew slave-concubine had, impliedly, to bring formal charge of disregard of marital duty against her master in order to secure her freedom from him.[226a] And just as there, so here also, it follows that, if the sister-in-law's charge is found to be true, she secures her freedom from her brother-in-law's control without the payment of money. But coupled with all this is the obvious fact that the *mišpaṭ* in this stage of its evolution still regards levirate marriage as a pious duty, in general conformity with the moral and social standards of the day, which it therefore commends to and even attempts mildly to enforce upon a reluctant brother-in-law by requiring him to submit to a disagreeable and degrading, public ceremony if he persists in the rejection of his sister-in-law and in his refusal to discharge his obligation to her and the duty of piety to his deceased brother.

---

[226] Perhaps this implied, at least in the majority of cases, that one of the brothers, and that usually the younger, was still unmarried. It may imply further a tendency toward monogamy such as, as we know from Biblical evidence, gradually became the rule in Israel, and that, if the second brother were already married, and the two in consequence no longer lived together as one household, this might constitute an obstacle, even though not yet an absolute bar, to the second brother taking the widow as his wife.

Certainly all these conditions, which seem here in the *mišpaṭ* in Deut. 25.5–10, and even in its later and obviously second half, to be in process of development, have become definite and established institutions in the Book of Ruth. There the conditions are altogether different than in Deut. 25.5–10, and the whole institution has become primarily and almost entirely a matter of inheritance. In the first place the procedure is not confined to brothers dwelling together as in Deut. 25.5, nor even to brothers alone, but applies to all male relatives, apparently in descending degree of relationship. The underlying principle in Ruth 3.9–4.10 is the same as that set forth in Lev. 25.23ff., that property in land and in other chattels may not pass out of the possession of the family. The different members of the family or clan stand toward each other in the relationship of first redeemer, second redeemer, etc. according to the proximity of their relationship to the deceased.

Seemingly here, by a provision which we meet nowhere else

[226a] Somewhat similarly, in Mecca today "a woman has no direct power to divorce her husband; but in the event of his sexual impotence, cruelty, or neglect of her, she may apply to the Cadi for a decree of divorce if her husband refuses to divorce her"; Rutter, *The Holy Cities of Arabia*, II, 88.

in the Bible, but which was no doubt fairly well established at the time of the composition of the Book of Ruth, since it accorded to the surviving mother of the dead man a measure of protection which would otherwise have been entirely lacking, Naomi inherits from her dead sons, not the family estate itself, but the right to dispose of it, or rather to have it redeemed, no doubt for a nominal price, by the next of kin. Presumably from the proceeds of this redemption sale she would have had enough to provide for her old age. That the redemption-price was purely nominal, so that it was decidedly advantageous for the redeemer to avail himself of his opportunity, may be inferred from the readiness of the first redeemer to comply with the custom, so long as there were no other encumbrances (4.4). Apparently too, however, the widow of the deceased man went with the property as a definite part of the estate, and with this was joined the obligation, if up to that time she was childless, of the redeemer entering with her into the relation of levirate marriage.

Moreover, apparently, the first male child resulting from this marriage would be regarded as the child of the dead man, and in all likelihood the particular piece of the family estate which had belonged to the dead man would eventually revert to this nominally posthumous son of his; in other words, the redeemer would not have acquired a permanent right to this piece of property, heritable in his own estate, but would have had the right only of its use and enjoyment for so long a period as there was as yet no male offspring resulting from this levirate marriage, or the child was still too young to assume control of his property. Seemingly, however, so soon as this child attained the proper age, the property originally belonging to his nominal father reverted to him from out the possession of the redeemer, his actual father.[226b] And if the latter were married already at the time of entering into this levirate marriage with the widow of the dead relative, and particularly if he had children by his first wife, it can readily be seen that this entire procedure might lead to considerable confusion and trouble in the eventual division of the estate of the redeemer between these various children of his regular and of his levirate marriage; and this confusion might well be increased and intensified if the redeemer had other subsequent children by this levirate wife, children who would certainly have been regarded as his own and not as those of the dead man. It is easy therefore to comprehend the import of 4.6, that the first redeemer would hesitate to proceed with the act of redemption for fear of confusing or of "destroying" his own estate.

[226b] This would be altogether in the spirit of the redemption-legislation in Lev. 25.23ff. This may well indicate that the Book of Ruth is younger than the legislation for the Jubilee Year in Lev. 25.

For, from vv. 5 and 10 it is clear that Ruth, the widow, is regarded as an inalienable part of the estate, and that therefore in acquiring the estate through paying the redemption-price to Naomi, the redeemer likewise acquires Ruth as a levirate wife, a part of the estate, and assumes the obligation of raising up with her a male child in the name of her dead first husband.[227] Manifestly the institution of levirate marriage underwent a radical change and a far-reaching development in the period intervening between the composition of Deut. 25.5–10, or even 7–10, and the Book of Ruth. The duty of levirate marriage is no longer confined only to brothers dwelling together, nor even to brothers alone, but rests upon all male relatives in the descending degree of relationship. Moreover, it is no longer a primary duty or relationship, but has become altogether secondary and incidental to the process of redemption of the estate; it is now primarily a matter of inheritance. The redeemer inherits not only the estate of the dead man but also his widow as a part of the estate; but with her comes the duty, although now altogether of secondary import and urgency, of raising up a male child in the name and as the supposed offspring of the dead husband. He has, however, full option of refusing to perform the duty of redemption if it be coupled with the duty, which may well be distasteful to him for one reason or another, of entering into this levirate marriage with all its peculiar conditions and obligations. Nor does any shame attach to him because of such refusal. This too is in significant contrast to the underlying thought and purpose of Deut. 25.9–10, particularly in its original form.

---

[227] Reading, with Vulg. and Peš. גם את רות as, in v. 10 and as the context unquestionably requires.

Moreover, the transaction with the sandal is here quite different than in Deut. 25.9–10. Here the redeemer himself draws his sandal from off his foot, and apparently hands it to Boaz.[228] This was in strict conformity with the custom that in sealing a commercial transaction of any kind, whether redemption or barter, in ancient Israel, A, the seller, would draw off his sandal and give it to B, the purchaser; thereby the transaction became binding and irrevocable. Here, therefore, this act symbolizes the fact that Boaz has acquired from the first redeemer, not merely Ruth herself, but the right of redemption of the entire estate of the dead man. To this transaction Ruth was only incidental; she came with the rest of the estate. Therefore here the drawing off of the sandal has no primary connection whatever with the institution of levirate marriage, but is merely associated with the transfer to Boaz of the right of redemption of the estate. This is by no means the same practice and import as that recorded in Deut. 25.9–10. It does, however, establish beyond all question that the import of the rite there prescribed, viz. that the widow drew the sandal of her brother-in-law from off his foot, was that which we proposed above viz. that she has forcibly acquired her freedom from his possession and control.

It is clear from all this that the institution of levirate marriage went through a long and significant evolution in ancient Israel. And apparently a still further stage of this evolution may be discerned as the result of a minute analysis of the last portion of the Book of Ruth. As we have seen, in the narrative proper of this book the basic thought is still that the first son born to Boaz and Ruth would be regarded, not as the son of Boaz, the actual father, but as the son of Ruth's first husband and the descendant of Elimelech and Naomi.[229] And this is in fact the explicit statement, put into the mouth of Boaz in 4.10 as well as the manifest implication of 4.14–17a. All this accords exactly with the original and basic purpose of the institution of levirate

[228] So LXX, and undoubtedly correctly.

[229] Cf. also 1.11–13.

marriage as practiced in ancient Israel. But in 4.11b–12 and 17b–22 an altogether different point of view is expressed. There it is no longer the house of the dead man, Mahlon, which is to be built up, and whose name is to be perpetuated in Israel through the birth of a son to Boaz and Ruth, but it is now the house of Boaz alone; and the son born of this marriage is recorded in these verses as the son, not of the dead husband of Ruth, but of Boaz himself. These two points of view are altogether contradictory. And not this alone, but those verses which represent this child as actually the offspring of Boaz and the perpetuator of Boaz' family are in direct conflict with the underlying theme of the Book of Ruth. Only one conclusion is possible, a conclusion suggested already by Bertholet,[230] that vv. 11b–12 and 17b–22 are secondary, late additions to the Book of Ruth.[231]

---

[230] *Commentary* (in Marti's *Hand-Commentar zum Alten Testament*) to the passage.

[231] Note that with their omission all discordant elements are removed and the unity of the original narrative is more firmly established. Certainly v. 13 follows perfectly immediately upon v. 11a. Likewise the style of these verses, manifestly reminiscent of the genealogical tables of the Priestly Code, is indicative of late composition. Also in v. 17b the name Obed (or, if a theophorous name originally [cf. Bertholet, *ibid.*], whatever it may have been) does not fit the context of v. 17a; for that implies that the name given by the women to the child was in some way related to the fact that through this levirate marriage a descendant had been born to Naomi and her dead husband, and this the present name Obed hardly suggests. In all likelihood therefore a different name stood here originally, and the giving of this name to the child formed the original and fitting climax and conclusion of the Book of Ruth. Accordingly the secondary matter in this portion of the book must have begun with v. 17b. In the original Book of Ruth the episode of the levirate marriage between Ruth and Boaz was, of course, the basic theme. Undoubtedly its prime import was to show how a foreign woman, and a Moabitess at that, one of that nation the members of which, according to Deut. 23.4, were never to be admitted into the congregation of Israel, proved herself to be a faithful and deserving Jewish wife, who conducted herself in circumspect manner under very trying circumstances and even conformed loyally to the difficult but pious duty of levirate marriage. Unquestionably the book was intended to be a powerful plea for a broad, universalistic religious and social outlook and for a tolerant and inclusive interpretation of the theory and practice of Judaism. It must have been composed at some time around the middle of the 5th century B. C., in opposition to the developing spirit of extreme exclusivism which culminated in the marriage reforms of Ezra and

But it is self-evident that these verses, representing the child born from this union of Boaz and Ruth as actually the child of Boaz, his physical father, and the perpetuator of Boaz' family line could never have been added to this narrative had not the old institution of levirate marriage been practically completely outgrown by the time this addition was made. For they say emphatically that the child springing from such a union is to

---

Nehemiah and which, in Deut. 23.4, denied specifically the right of membership in the Jewish community to the descendants of an Ammonite or a Moabite, even unto the tenth generation. (This reference to the tenth generation establishes with absolute certainty that this law denies the privilege of membership in the Jewish community, not to an Ammonite or Moabite who would convert to Judaism, but to the male offspring of Jewish fathers and Ammonite or Moabite mothers. It then goes on to imply that these children partake of the nationality of their mothers, and are therefore themselves called Ammonites or Moabites. And finally the law says that even if these children likewise marry Jews, and their children in turn continue this process through ten generations, none the less even in this tenth generation the offspring would still be considered as Ammonites or Moabites, and entrance into Judaism and Jewish fellowship would be denied them. It is, of course, the extreme of exclusivism and fanaticism, apparently even more extreme than, but nevertheless altogether in the spirit of the marriage reforms of Ezra and Nehemiah. And manifestly the Book of Ruth [ct. also Gen. 27.46] represents a strong, though apparently an ineffective protest against these reforms. Obviously too these marriage reforms of Ezra and Nehemiah, with all this attendant literature, reflect a religious and social point of view and likewise a literary process later than those recorded in Deut. 20.14, which certainly sanctions marriage unions with Ammonite and Moabite women and regards the offspring of these unions as Jews to the fullest degree.)

Later, however, the insertion and addition of these few verses, 4.11b–12 and 17b–22, changed the entire character and purpose of the book. The traditional family tree of King David was added, and in place of the original name of the child, that of Obed, a traditional ancestor of David (cf. Matt. 1.3–6; Luke 3.32–33) was substituted. This substitution and addition must have been due either to a strong interest in David and in the idea of the restoration of the Davidic dynasty to the throne of the restored kingdom, or to an equally strong interest in the expected Messiah, a scion of David. And this addition served one of two purposes, either to strengthen the original purpose of the book by showing that from this marriage with a Moabite woman not only a worthy son, but actually the great King David and the entire royal line of Judah and even the supreme figure of the expected Messiah had been and was to be born; or else the addition of these few verses served merely to add another unusual birth-legend to the Davidic and Messianic tradition, in accordance be regarded as the actual child of his physical father, and that the old practice of regarding him as the child of the deceased first husband of his mother, is no longer in force. This does not mean at all that the institution of levirate marriage itself had

with the interesting principle noticable in the messianic legends of many peoples, that the birth of the Messiah and the births of many of his ancestors were attended by various unusual circumstances.

Likewise in v. 14b the word שמו gives rise to certain problems. Bertholet (*ibid.*) holds that the suffix here refers to the child, and that he is the *go'el* of v. 14a. Undoubtedly the suffix here does refer to the child; but certainly, not the child, but Boaz was the *go'el* of v. 14a. But since the suffix in שמו does refer to the child, we should expect the name of the child to follow immediately upon בישראל, and the passage to have the natural meaning, "And let his name be called in Israel X," precisely the same formula employed still today in the traditional Jewish ceremony of bestowing a name upon a child. But if this were the original reading, then it would follow that not merely v. 17b, but also v. 17a would be secondary, since v. 17a would then repeat unduly what would have been already stated sufficiently in v. 14b. In such case too v. 16 would have constituted the original conclusion of the book; and, it must be admitted, it would undoubtedly have been an even more fitting conclusion to the book than v. 17a coupled with the statement of the actual name of the child. The suggestion is attractive indeed. But against it two facts speak strongly. First, had v. 17a been a late addition to the book, and that by glossators who obviously wrote in the spirit of the Priestly Code, they would never have stated, what v. 17a says now, that the women gave the child its name. Instead they would have represented the father as performing this act (cf. my "*Beena* Marriage [Matriarchat] in Ancient Israel and Its Historical Implications," *ZAW* 6 [new series] [1929], 97f.). And in the second place, the words ויקרא שמו בישראל in v. 14b remind strongly of ולא ימחה שמו מישראל in Deut. 25.6b, and suggest that they have just these latter words in mind, and that through the marriage of Ruth and Boaz the fundamental duty of levirate marriage set forth in Deut. 25.5–6 had been literally and completely fulfilled. In the light of these two facts it seems better to reject the suggestion made above and to abide by our first assumption that v. 17b, coupled with the statement of the actual name of the child, is original and constituted the natural conclusion of the Book of Ruth proper. But in such case the difficulty inherent in the suffix of שמו still persists. Actually, if we admit the analogy between v. 14b. and Deut. 25.6b, we would expect here, not שמו but שם בנךָ or שם אישךָ. Just such a reading is likewise presupposed by the context. Not improbably therefore this was the original reading. In all likelihood then the present reading is due to the glossators who inserted vv. 11b–12 and added vv. 17b–22, and thus minimized the import of the original motif of the levirate marriage in favor of their evident interest in the Davidic and Messianic genealogy.

fallen into desuetude, but only that the custom of regarding the first male child resulting from such a marriage as the child of the dead first husband was no longer in vogue. Manifestly the institution of levirate marriage still survived,[232] but equally manifestly it had become now merely an institution dealing with inheritance and little else; the heir of a dead man inherited the wife of the deceased along with the rest of his estate and could use her as his wife if he so desired, in which case any children resulting from such a union would be regarded as his own. Presumably, if he did not desire to use the widow of the dead man as his own wife, she gained her freedom automatically. We may hardly assume that she was retained against her will in the household of the heir in a position which was practically tantamount to slavery.

In the light of all the evidence here presented we can easily distinguish five different stages in the evolution of the institution of levirate marriage in the Biblical period. The first of these is that pictured in Gen. 38, where the duty of levirate marriage is incumbent upon the brothers of the deceased, apparently in the descending order of age, and where, if there is no brother, then this duty apparently devolves upon the father of the deceased. In this stage of evolution there is no option whatsoever, but the next of kin has the imperative and inescapable duty of taking his deceased brother's widow. The first male child resulting from this union is accounted the child of the dead man and the perpetuator of his name and family. This is the basic purpose of the institution of levirate marriage in this first stage of its practice in ancient Israel. Considerations of mere inheritance of property are of minor significance, if they are considerations at all.

The second stage of the evolution of this peculiar institution is that reflected in Deut. 25.5–6. Here it is still a paramount and seemingly inescapable duty for the brother to take the widow of the deceased husband. But the institution is now limited explicitly to brothers who actually live together as one household; and quite certainly the father of the dead man is excluded completely from the right or duty of levirate marriage;[232a] but this duty seems to be still absolute and inescapable for the living brother. The primary, if not the sole purpose of the institution is still to perpetuate the name of the dead man. Seemingly the consideration of inheritance plays as yet no role at all, or at the best a very minor one, in the institution in this stage of its evolution.[233]

---

[232] And continued to survive formally through the rabbinic period down until the time of Rabbenu Gershom (circ. 1000 A.D.); cf. *JE*, VIII, 45f.

The third stage of the evolution of the institution is depicted in vv. 7–9a of this same *mišpaṭ*. It represents apparently a very decided advance over the preceding stage of evolution. Here the duty of levirate marriage is still limited to the brother of the deceased husband, but the duty is no longer absolute. The brother-in-law can, if he so chooses, refuse absolutely, and that even before the legal authorities, to perform the duty of levirate marriage with his sister-in-law, and no power, legal or social, can compel him to act contrary to his own wishes. None the less, it is clear, popular opinion still favors conformity to this institution and seeks to influence the brother-in-law, as far as it may, to perform this duty. Moreover, it is now clearly a two-fold duty, to the dead brother, but also, and seemingly equally, to the sister-in-law; and in the sight of the court of elders, i. e. in its strictly legal aspect, it is the latter duty rather than the former which seems to be paramount, and it is the woman herself whom the law now seeks primarily to protect. The basic consideration of the institution is still that of perpetuating the name of the dead man; but manifestly considerations of inheritance are now coming to the fore, and it is from the property rights over her, which the laws and institutions of inheritance conferred upon her brother-in-law, that the *mišpaṭ* in vv. 7–9a seeks to free the widow.

[232a] Cf. Ezek. 22.11. It may well be that that v. reflects the gradual decay of the old custom of fathers of dead sons having sexual relations with their widowed daughters-in-law under certain conditions; for it is easier and more natural to conceive of such abnormal relations arising in conformity with peculiar and somewhat unusual social customs and standards rather than in response to mere, unnatural lust. Moreover, the v. seems to deal with one, and perhaps two, other forms of sexual union which were at one time regarded in Israel as natural and altogether proper. For an altogether different condition of sexual relationship between father- and daughter-in-law cf. above, note 34.

[233] Perhaps the prescription in v. 5, that the woman may not go outside the family to become the wife of a strange man, has some implications of inheritance and of the possible loss from the family possession of a piece of property of considerable value were she suffered to become the wife of a stranger. The verse seems to imply also that if the brother-in-law did not take her, she would automatically have the right to withdraw from the family circle of her dead husband to become eventually the wife of another and a strange man.

In the fourth stage of evolution, as depicted in the original sections of the Book of Ruth, considerations of inheritance and of property rights have come to the fore decidedly and have become the paramount principle. Accordingly the institution is extended widely in its application. It is no longer only the brother, who is subject to the duty of levirate marriage, but the next of kin, whoever and how remotely related he may be. Apparently he inherits the widow of the deceased man and the enjoyment of his property until the maturity of the first male child who may be born from this marriage. But the original, primary consideration still persists in the practice of the institution, although seemingly now of somewhat secondary significance, and the first male child resulting from this union is regarded as the offspring of the dead man, the perpetuator of his name, and consequently the heir of his property so soon as he comes of age. The duty of accepting the property of the dead man for the time being and of marrying his widow and raising up a child in his name, is not at all obligatory, and the refusal to perform it carries with it no shame whatsoever. In case of such refusal by the first heir or "redeemer," the duty, together with the privilege of inheritance, passes to the next of kin, and so on in steadily descending line until at last one relative presents himself as ready to comply with the conditions of inheritance and levirate marriage, or, presumably, until the entire line of male relatives is exhausted.

The fifth and final stage in the evolution of the institution of levirate marriage in the Biblical period of Israel's cultural history is recorded in those passages of the Book of Ruth which we have been compelled to regard as late insertions, viz. 4.11b–12 and 17b–22. Here the child born of the levirate marriage is regarded as the natural child of his actual father and the latter's family is perpetuated through the child. This is the point of view not only of these insertions in Ruth but also of Gen. 46.12; Num. 26.20f., and I Chron. 2.4.[234] These are all late passages, products of the late post-exilic period, and obviously reflect the attitude toward the institution of levirate marriage which had come to obtain quite generally in this period. It is clear therefore that in this fifth and final stage of the evolution of the institution in the Biblical period the old, basic principle, unique in the Hebrew legislation, that the first male child born of the levirate marriage is to be regarded as the offspring of the deceased first husband of the woman has been completely outgrown, and that the institution has become, just as it seems to have been among other Semitic peoples, a matter of inheritance of property and naught else.[235]

[234] Cf. also Neh. 11.4–6; I Chron. 4.1; 9.4.

[235] Probably a sixth and final stage of the evolution of the institution of levirate marriage in Israel may be seen in the absolute command recorded in Lev. 18.16 and 20.21 forbidding the union of brother- and sister-in-law. It is clear from the explicit statement in Lev. 20.21 that such a union is basically displeasing to Yahwe and therefore will result in childlessness, that the understood purpose of such a union was not the satisfaction of mere lust but the desire to have children, or at least a child. Had the purpose been the satisfaction of mere lust, then unquestionably childlessness would have been the thing most desired and would never have been regarded as a manifestation of Yahwe's displeasure. Obviously therefore this law in Lev. 18.16 and 20.21, like quite a number of parallel laws in the same two chapters, is dealing with a problem, not of unnatural lust and incestuous relations, but with the suppression of certain marriage relations which were at one time considered in Israel as natural and proper and which were readily and not infrequently practiced, but which had by the time of the Babylonian exile or the early post-exilic age come to be regarded as violating the advanced and refined moral and social sense of that period and therefore as displeasing to Yahwe and consequently forbidden under all conditions.

It is not at all improbable that this law in Lev. 18.16 and 20.21, with its absolute prohibition of levirate marriage, is actually older than the latest editorial processes of the *mišpaṭ* in Deut. 25.5–10 or than the Book of Ruth. This would be altogether natural, and would mean no more than that the evolution in ancient Israel of the institution of levirate marriage, particularly in its later stages, was not perfectly simple and progressive, but that at somewhat different moments and in various legislative circles different attitudes towards the institution obtained, attitudes ranging all the way from that of mild approval of and desire to see the ancient institution perpetuated to that of absolute disapproval and prohibition. And it is not without interest to note that it was the former, and not the latter, attitude which, with minor

Returning now to the specific consideration of the *mišpaṭ* in Deut. 25.5–10, we see that it reflects three of the five different stages in the evolution of the institution. Vv. 5–6 reflect the second stage, vv. 7–9aα reflect the third stage, and vv. 9aβ and 10b reflect the fourth stage. It is clear therefore that the *mišpaṭ* is composite. Apparently it is the product of three different stages of legislative enactment and expansion. Early legal authorities formulated the *mišpaṭ* as we have it in vv. 5–6. Then later legal authorities modified this original *mišpaṭ* by the addition of the subordinate condition recorded in vv. 7–9a$\alpha\gamma$b, 10a.[236] Or, on the other hand, equally possible is the assumption that, even though they reflect two different stages of the evolution of levirate marriage in Israel, vv. 5–9a$\alpha\gamma$b, 10a may constitute a single literary and legislative unit, viz. the statement of the basic principle, representing the original custom and folk-practice and the later modification which evolving culture had necessitated and for which this *mišpaṭ* makes necessary legal provision. Between these two hypotheses it is difficult to choose; nor is it a matter of vital importance. But it is clear that in either case the *mišpaṭ* could not have assumed the definite and specific form which it has in these verses at an all too early date. We need not hesitate to regard the *mišpaṭ* in this form as pre-Deuteronomic, but we may hardly posit for it a date much earlier than the middle period of the divided kingdom, i. e. hardly before the 8th century B. C.

And certainly the additions, in vv. 9aβ and 10b must be regarded as a late insertion, undoubtedly from the late post-exilic period, in other words an addition to the *mišpaṭ* after it had already taken its present place in the Book of Deuteronomy.

These considerations, however, leave no reason whatever for not believing that the *mišpaṭ*, before the addition of vv. 9aβ and 10b, may have been a part of the pre-Deuteronomic *mišpaṭ*

---

modifications and regulations, tended to prevail in the late Biblical and rabbinic periods.

[236] Not impossibly other complex *mišpaṭim*, containing a number of subordinate conditions which qualify materially the statement and application of the basic principle contained in the introductory and primary condition, may have evolved in much the same manner; cf. for example, Ex. 21.2–6; 7–11.

corpus, the existence of which we have posited, and may even have stood there in the group of marriage-*mišpaṭim*, the evidence for which we have already considered.

Two *mišpaṭim* of peculiar interest must be treated together, since they stand in immediate contact with and in obvious relation to each other. They are found in Deut. 21.15–17 and 18–21. It will be well to treat the second *mišpaṭ* first. It says: If a man has a stubborn and rebellious son, who does not hearken to either his father or his mother, and though they discipline him still he does not hearken to them, and then if the parents seize him and bring him to the elders of his town to the town gate and say to the elders, "This, our son, is stubborn and rebellious; he does not hearken to us, he is a profligate and a drunkard," then all the people of his town shall stone him to death, and thou shalt purge the evil from thy midst, and all Israel shall hear and take warning. The meaning of the *mišpaṭ* is plain on the surface and requires no comment. It has all the earmarks of an old, pre-Deuteronomic *mišpaṭ*, embedded in a Deuteronomic setting. Indicative of the latter are the characteristic provisions at the very end, in v. 21aβb, "and thou shalt purge the evil from thy midst" and "and all Israel shall hear and take warning," with the sudden transition from the third person in the body of the *mišpaṭ* proper to the second person of ובערת and מקרבך. The original, pre-Deuteronomic *mišpaṭ*, complete in every respect, is found in vv. 18–21aα. Unquestionably the Deuteronomic editors borrowed it from the original source without the change of a single word and without the slightest addition or supplementation. The provisions of the *mišpaṭ* seem to be so extreme and heartless as to be almost unbelievable. Yet for this very reason we can comprehend all the better the selection by Deuteronomic editors of this particular *mišpaṭ* from its original source and its inclusion in the Deuteronomic Code, when we remember the urgent problem which confronted the early post-exilic age, viz. to keep the people and the land purged of all evil and defilement in order that Yahwe's continued sojourn in their midst might not be endangered; and this coupled with the additional principle which we have noted, that the death of the offender for his sin or crime had a positive, expiatory effect and therefore a consequent social value. In the light of this basic religious and social philosophy we can easily understand the, otherwise altogether inexplicable, extreme rigor of this almost unbelievable *mišpaṭ*. And we may well imagine too that even under the rigid religious and social principles of the early post-exilic age this particular *mišpaṭ* found very infrequent enforcement.

The preceding *mišpaṭ*, in vv. 15–17, says this: If a man has two wives, one beloved and the other disliked, and each of them bears him a son, and the older son is from the disliked wife, then on the day when he divides his estate between his sons, he may not recognize the son of the beloved wife as the firstborn in preference to the son of the disliked wife who is the actual firstborn, but he shall recognize the son of the disliked wife as the firstborn by giving to him a double portion of all his property; for he is the first fruit of his manly vigor; to him therefore the right of firstborn-sonship pertains. The meaning of this *mišpaṭ* too is perfectly plain on the surface. It too is direct, complete and concise.[237] It is likewise cast in the third person throughout. It too is obviously an old, pre-Deuteronomic *mišpaṭ*. But old though it undoubtedly is, it definitely presupposes a still older legal principle and procedure, here itself specifically designated as a *mišpaṭ*,[238] viz. that the firstborn son is entitled to a double portion of his father's estate.

The problem confronting us here is how to account for the presence in the Deuteronomic Code of this particular *mišpaṭ*; for apparently it has no direct relationship to any specific Deuteronomic problem. And, quite significantly, the characteristic

---

[237] Unless we conclude that v. 17b is an explanatory addition of RD. Certainly the *mišpaṭ* would be complete and perhaps even more direct without it, as it would also be more concise, of course. A further indication of the editorial character of v. 17b may perhaps be seen in the use of the peculiar expression ראשית אנו, borrowed probably from Gen. 49.3.

[238] Even though we regard v. 17b as RD, and not as a part of the original *mišpaṭ*, there can be no question of the correctness of its use here. However, it must be recognized that the term *mišpaṭ* here means a legal principle, a right, rather than a specific law couched in definite literary form. However, it is reasonable to suppose that the original, pre-Deuteronomic *mišpaṭ*-corpus contained a specific law, couched in the characteristic *mišpaṭ* form, providing for the receipt of a double portion of the father's estate by the first-born son.

RD clauses and motifs, such as "and thou shalt purge the evil from thy midst," and the like, are entirely lacking here. It might perhaps be argued that under the rigid social and ethical standards of the early post-exilic age the principle of fairness and non-discrimination in the apportionment of estates would be an important matter and so justify the inclusion of this *mišpaṭ* here. But in such case we would all the more expect the *mišpaṭ* to deal with the question of the procedure in case this principle was ignored or defied, and this in turn to be coupled with the characteristic clause, "for whoever does this is an abomination to Yahwe," if not the even stronger provision, "and thou shalt purge the evil from thy midst." The absence of any such characteristic Deuteronomic editorial clause seems to indicate, on the one hand, that this particular *mišpaṭ* has no Deuteronomic import whatever. And on the other hand, it seems to indicate that the presence of this *mišpaṭ* here is largely fortuitous. The fact that the characteristic clauses do occur at the end of the next *mišpaṭ*, in v. 21aβb, probably implies that, just as in 22. 13–21, these two contiguous *mišpaṭim* constitute a kind of literary unit.

This assumption is easily comprehensible. Both *mišpaṭim*, that in 21.15–17a and that in vv. 18–21aα, have a certain basic theme in common, viz. the treatment of sons by their parents, or perhaps better, the authority of parents in relation to their sons. Presumably therefore in the original pre-Deuteronomic *mišpaṭ*-corpus these two related *mišpaṭim* stood in immediate juxtaposition,[239] and in consequence in borrowing the second *mišpaṭ* from the original corpus and transferring it to the Deuteronomic Code the Deuteronomic editors inadvertently coupled with it the *mišpaṭ* which immediately preceded it in the original corpus.[240] And just because these two *mišpaṭim* were borrowed as a unit, the characteristic Deuteronomic editorial clauses occur only after the second *mišpaṭ*, but are entirely lacking after the first. If this assumption be correct, it is, of course, a potent bit of evidence of the existence of this old, pre-Deuteronomic *mišpaṭ*-corpus, which we have posited.[241]

---

[239] It is interesting to note that in CH, §§165 and 168f., laws of somewhat similar import stand also in fairly close juxtaposition to each other. However, the significant differences between those laws, on the one hand, and these two Biblical *mišpaṭim* on the other, forbid the assumption that the latter are in any way dependent upon the former. It suggests rather that just as in CH the laws in question are part of a section of the Code which regulates the treatment of children by parents and the rules of inheritance, so too, in the original, ancient Israelite *mišpaṭ*-corpus, from which these two *mišpaṭim* were extracted, they constituted a part of a section or paragraph which also regulated the treatment of children by parents and perhaps also inheritance rules.

---

[240] It might possibly be argued that the *mišpaṭ* in vv. 15–17a has quite as much affinity with the law which immediately precedes it in vv. 10–14, as it has with the *mišpaṭ* which follows in vv. 18–21aα, and that therefore our conclusion of the immediate juxtaposition and consequent literary unity in the pre-Deuteronomic *mišpaṭ*-corpus of the two *mišpaṭim* in vv. 15–17a and 18–21aα is invalidated. This is, however, not the case. Actually vv. 10–14 are no real *mišpaṭ*. True the passage begins with a conditional sentence introduced by כי; but this is the only *mišpaṭ* characteristic found in vv. 10–13; and on the other hand, the use of the second person singular throughout is directly contrary to the regular *mišpaṭ* style, and indicative of Deuteronomic authorship. Instead of a *mišpaṭ* these verses record an important and interesting ritual procedure. They constitute, moreover, the natural and immediate continuation of the thought of chapter 20, as the identical introductions in 20.1 and 21.10 indicate. Specifically 21.10–13 continues directly the thought of 20.14 in that it prescribes the exact procedure by which a woman whose capture in warfare was permitted (Deut. 20.14) might be taken as a wife. To this ritual procedure in vv. 10–13 a note is appended, which establishes a definite and necessary measure of protection for the captive women in case her husband-master in time conceives a dislike for her. It provides that in that case she receives her freedom automatically, and may under no condition be sold or used by her husband-master as a slave. This last verse is, of course, not a *mišpaṭ* itself, although it obviously rests upon two definite *mišpaṭ* principles, which we have come across several times in the *mišpaṭim* already treated. The first of these, basic also in the *mišpaṭim* in Ex. 21.7–11; Deut. 22.13–19; 28–29, was that a woman with whom a man had had marital relations could not be sold by him as a slave in case he came to conceive a dislike for her, but either remained his wife permanently or acquired her freedom automatically. And the second principle, basic in Ex. 21.7–11 again, and also in Deut. 25.5–9aα, was that if a man withheld from a woman the duty of sexual enjoyment due her from him, she acquired her freedom automatically. (For the same principle in Babylonian law, cf. CH §142.) The application here of these two established *mišpaṭ* principles, appended as an additional provision to the original ritual procedure, is strong indication of a post-exilic date for this entire passage. In fact there is ample and convincing evidence that all the war-legislation and related passages in Deuteronomy are of purely theoretical, unreal and impracticable character and of post-exilic composition. Into this question, however, we may not enter here.

In Deut. 24.7 another *mišpaṭ* occurs, coupled with the characteristic Deuteronomic editorial clause, "and thou shalt purge the evil from thy midst." The *mišpaṭ* proper says quite simply and directly: If a man is found stealing one of his brethren of the Children of Israel and uses him as a slave[242] or sells him, the thief shall die. It is difficult, if not quite impossible, to determine whether this *mišpaṭ* was borrowed from the original, pre-Deuteronomic *mišpaṭ*-corpus, or whether it was original with the Deuteronomic legislators or editors who expanded the original Deuteronomic Code in this characteristic manner. It is noteworthy that here the death-penalty is expressed by the verb *met* in the *Qal*.[243] None the less execution by the state is undoubtedly implied.[244] Obviously too the death of the kidnapper has expiatory force. While therefore, this evidence is not at all decisive, it tends to indicate that this particular *mišpaṭ* was not taken from the old, pre-Deuteronomic *mišpaṭ*-corpus, but was of Deuteronomic authorship, and the product of the early post-exilic period.

---

[241] 21.1–9, though couched quite obviously in *mišpaṭ* form, is also none the less not a *mišpaṭ* at all, but the record of a purely ritual procedure. The original form and character of this passage become all the clearer when we realize that vv. 5, 8 and 9 are unquestionably Deuteronomic editorial additions designed to provide an important function for the priests in all such ceremonies and official procedures (cf. above p. 132). With these secondary verses removed what remains makes the decided impression of an old ritual formula, couched in positive literary form, the exact literary origin of which, however, it is difficult to determine. Of the rite itself I have treated in considerable detail elsewhere (in a still unpublished and not quite completed work, *Rites of Birth, Marriage, Death and Kindred Occasions among the Semites*).

[242] That this is unquestionably the meaning of והתעמר בו may be inferred from a comparison with 21.14, the only other Biblical passage in which this verb is used. There the two alternatives of treatment are that the master may not sell the captive woman with whom he had previously had sexual relations and then subsequently had conceived a dislike for her, nor, quite naturally, may he use her actually as a slave-woman. Here also we have the same two alternatives, although in the reverse order. This connotation of the verb התעמר was proposed by Rashi (to 21.14) who, however, strangely enough, explained it on the basis of analogy with the Persian, an explanation which he had in turn from R. Moses Hadarshan (circ. 1050). Further proof of the correctness of this interpretation of התעמר may be found in the comparison of Deut. 24.7 with its parallel in Ex. 21.16. There too, just as here, two alternative conditions exist for the kidnapped person. There, just as here, he might be sold, as a slave, of course, or he might still be found in the possession of the kidnapper. Certainly in this latter condition he was not held by the kidnapper merely in order to make him the object of brutal treatment, perhaps until such time as he might be sold as a slave, but he must actually have been used by the kidnapper as a slave, probably through the exercise of force. Just this would constitute the parallel in Ex. 21.16 to והתעמר בו of Deut. 24.7.

In 21.22–23 a law occurs which, though couched in characteristic Deuteronomic *mišpaṭ* form, with the use of the second person singular, is none the less, despite both its form and its obvious relationship to a judicial matter, viz. the execution of the death sentence, actually not a *mišpaṭ* at all, in the strict sense of the word, but is rather a ritual law. The exact meaning of the law is not absolutely certain, due to two obscure expressions. Its most probable meaning is this: If a man is found guilty of a crime the penalty of which is death and he is executed and (then) you suspend him (i. e. the corpse) upon a tree, you shall not allow his corpse to remain upon the tree over night, but you shall surely bury him upon that very day, for a (corpse) suspended is an affront to a (i. e. its) ghost; and you shall not defile your land which Yahwe, your God, giveth you as a possession.

The first difficulty in interpreting this law arises out of the words והומת ותלית אותו על עץ. It is probably not impossible syntactically to translate them, "And he is executed and you hang him, etc.", i. e. hanging is the method of execution; ותלית would then be interpreted as defining והומת. This would imply, of course, that from of old hanging was an established method of execution in Israel. This is by no means impossible, although there is little, if any, actual evidence to that effect. Gen. 40.19, 22; 41.13 know of execution by hanging, but may well imply that it was an Egyptian and not an Israelite practice. Similarly the various references in the Book of Esther may imply too that hanging was a Persian method of execution. Actually the only Biblical passage in which hanging seems to be an outright Israelite method of execution is Josh. 8.29, and we shall see shortly that even here this conclusion is open to serious question.[245]

---

[243] So also in 17.12; 18.20; 19.12; 22.22, 25. The use of the *Qal* in this connection, instead of the *Hof'al* seems to be characteristically Deuteronomic. In the only passage in Deuteronomy where the *Hof'al* is used, where ordinarily the *Qal* might have been expected, 13.6, LXX apparently actually read the *Qal*. On the other hand, however, in 22.22, where both MT and LXX read the *Qal*, Peš. seems to have read the *Hof'al*. Of course, in 21.22 all versions, including MT, read the *Hof'al*, since the context there forbids the use of any other conjugation.

[244] This *mišpaṭ* has, of course, close affinities with Ex. 21.16. These will be discussed in connection with our consideration of that law in the next section of this paper. We shall see then that Ex. 21.16 is unquestionably younger than this *mišpaṭ* (contrary to Hempel, *Die Schichten des Deuteronomiums*, 241.)

Now it is significant that rabbinic literature recognizes only four legitimate methods of capital punishment, stoning, burning, strangulation and killing with a sword.[246] Hanging is not one of these.[247] Moreover, Targum Jonathan to this passage and also rabbinic legislation[247a] interpret this law as meaning that after a person has been executed for any crime, no matter what, nor what the method of execution, but seemingly particularly if it be by stoning,[247b] then, after the criminal has been put to death, his body should be exposed by being suspended upon a tree until just before nightfall. It is quite obvious, moreover, that this interpretation of this law was not original with the Rabbis and the result of characteristic rabbinical hermeneutic, for Josh. 10.26 seems to imply this very same procedure in the execution of the five captive Canaanite kings. This passage is undoubtedly Deuteronomic and dependent upon the very law with which we are dealing. But all the more therefore it indicates that already in the late post-exilic period this law was interpreted in just this manner. And if so, and since, moreover, this law is itself, as both its form and character indicate, the product of the early post-exilic period, then it follows that from the very first the law did not contemplate hanging as actually a method of execution, but that instead, just as we have interpreted it above, the exposure of the corpse upon the tree was supplementary to the actual execution.

---

[245] What may have been the ancient Israelite attitude toward execution by hanging and the basic reason for its infrequent use, if used at all, may be inferred from a significant fact cited by Oliphant (*The Land of Gilead*, 60): "As the soul is supposed to leave the body by the mouth, that is kept open (at the moment of death) with great care; and, in case of criminals in the hands of the authorities sentenced to be hung, their friends have been known to beg as a great favour, that they might be impaled instead." Undoubtedly the belief underlying this practice is of great antiquity and not improbably may have been current in ancient Israel. Its practical effect would have been, of course, to restrict greatly, if not to forbid absolutely the practice of execution by hanging.

[246] Cf. *JE*, III, 554ff.; article "Capital Punishment."

[247] Sanhedrin VI, 5 records the tradition that Simon b. Shetach hanged eighty witches on one day, but represents this as an altogether exceptional circumstance.

[247a] Sanhedrin, 46a.

[247b] *Ibid.*, based upon a mistaken correlation of Lev. 24.14ff. (cf. also Ex. 22.27 and Job. 2.9) with this law.

But what purpose could such exposure of the corpse of a criminal thus executed have? The answer is not far to seek. We have already noted that a number of these Deuteronomic *mišpaṭim* which prescribe the death-penalty close with the significant words, "And all Israel shall see and take warning (and never again do anything like this evil thing).[247c] Obviously to these Deuteronomic legislators the execution of the criminal had a threefold purpose, (1) to inflict the maximum punishment upon the actual criminal, (2) to make expiation for the crime and its defiling effects in behalf of all Israel, (3) to serve as a striking warning and deterrent to Israel, so that no one might ever commit that same crime again. Undoubtedly the exposure of the corpse in this manner was in conformity with this last purpose. Certainly such exposure would exert a strong public influence and would make possible the literal enforcement of the injunction, "And all Israel shall see and take warning, etc." We need not doubt that just this was the purpose of this strange rite, otherwise so completely out of harmony with customary Israelite procedure,[247d] and that furthermore, since, as we have seen, this purpose of giving striking warning to Israel is a motivating force in all this post-exilic Deuteronomic legislation, this law itself is the product of post-exilic Deuteronomic legislative activity.

[247c] Deut. 13.12; 17.13; 19.20; 21.21.

[247d] Both I Sam. 31.10 and II Sam. 4.12 present cases of the exposure of the corpse manifestly in order to serve as a warning against similar acts or crimes.

The second point of difficulty in this law, and one which has troubled scholars long and sorely, is the exact meaning of the phrase כי קללת אלהים תליו. Misled by analogy with Ex. 22.27 and Lev. 24.14ff., the expression is not infrequently translated, "for one hung is a blasphemy of the Deity"; or from this basic interpretation various modified renderings are derived. But on the one hand, all these various renderings are absolutely meaningless in this setting. And on the other hand, it is significant that in this very same verse the proper name of the Deity, Yahwe, is used without hesitation. It follows almost necessarily from this that *'elohim* here does not refer to Yahwe. Nor can there be any question as to what this word does refer to. Regardless of the various stages in the cultural evolution of this significant word, we may be sure that in the early, animistic stages of the evolution of Semitic religion, and particularly of the religion of Israel, *'elohim* designated those supernatural "powers" or spirits which controlled or affected the life of man. If not always, then certainly not infrequently, the word denoted an evil spirit. It is used in precisely this sense in Gen. 32.29 and 31.[247e] More specifically *'elohim* designated a spirit of a dead person, a ghost. It is used in this particular sense in two passages, I Sam. 28.13 and Is. 8.19. And unquestionably it is used in this very same sense in this particular law.

[247e] The implication of Gen. 32.25–33 seems not to have been developed quite fully by any scholar thus far, not even by Gunkel. The legend tells that, left alone on the far bank of the Jabbok, Jacob wrestles with something dread which attacked him and sought to kill him. The mere fact that the entire episode transpires during the night and that, when conquered, Jacob's opponent can not endure the light of day, establishes conclusively, as Gunkel has pointed out, that this is an evil spirit, powerful only during the night. For want of a better term, and perhaps suggesting also quite graphically what Jacob naturally took his opponent to be at the beginning of their combat, the text calls Jacob's opponent *'iš*, "a man." Apparently also for want of a specific term, Hosea 12.5 calls it a *mal'ak*, hardly, however, "an angel," but rather "a supernatural being." Actually, however, Gen. 32.29 tells exactly what Jacob's malicious opponent was, an *'elohim*. But it is possible to go even further and identify this spirit exactly. Gunkel has suggestively called attention to the fact that there is an evident play on words between *waye'abbeq* in v. 25 and the name of the river, the Jabbok, *yabboq*, in v. 23 (so also G. A. Smith, *The Historical Geography of Palestine*, 384, note 1). Occasionally in its course the Jabbok flows through a narrow, deep valley with steep sides, difficult of ascent and descent (cf. Merrill, *East of the Jordan*, 391–393). Some such spot

The correctness of this conclusion is proved by the fact that the law commands that the corpse must not be allowed to remain exposed upon the tree over night, but must be given proper burial before nightfall. Obviously it is the fear of the ghost of the executed criminal which prompts this provision, for not only ghosts, but also all evil spirits were believed to be particularly

as this must have been regarded as the traditional site of Jacob's struggle with the evil spirit. And unquestionably this particular evil spirit must have been intimately associated with the stream, and its name must therefore have been identical with that of the stream, Jabbok. It is quite likely that a secondary implication is that this river received its name because of the wrestling proclivities of the evil spirit dwelling in it. Not improbably the spirit had been affronted by Jacob's crossing the stream back and forth to transport his camp to the hither side, and by his contemplated crossing again on the morrow. At any rate it is clear that it seeks to take Jacob's life, probably by casting him into the water and there drawing him beneath the surface to drown. But Jacob proves the more powerful and, although injured in the struggle, succeeds in holding the evil spirit fast until, at the approach of dawn, he wrests a blessing from him. The significant fact for our study is that here an evil spirit is unmistakably termed an *'elohim.* (Perhaps so also in the original form of the tradition, of which a mere reminiscence is recorded in Gen. 32.2f.).

In this connection, and corroborating fully this interpretation of the legend in Gen. 32.25–33, we may cite an interesting legend recorded by Ad-Damiri (*Ḥayyat al-Ḥayyawan*, ed. 1330 of the Hegira, p. 372; translation of Jayyakar, I, 463). "It is related . . . that one of the Companions of Muḥammad (the Prophet) met one of the *jann*, who wrestled with him, endeavouring to throw him down; he said (to him), 'I see you are slender and thin as though your arms were the forelegs of a dog. Are all you *jann* like this, or are only you among them like this?' To which he replied, 'No, by Allah, I only among them am so strong-sided; but return to the contest, and if you throw me down, I shall teach you something beneficial to you.' He said, 'Very well,' and again wrestled and threw him down; whereupon the *jinn* said, 'Recite, "Allah, there is no deity but Him, the living, the self-subsistent!" ' And he replied, 'Very well.' The *jinn* then added, 'There is no house in which you recite it but from it Satan will come forth, making wind in the manner that an ass does, and into it he will not enter again until the morning'." A Samoan myth which parallels these two legends closely, tells how the hero wrestled with a spirit in the nether-world and conquered him and wrested from him for mortals the blessing of fire (Frazer, *Myths of the Origin of Fire* [London, 1930], 73).

powerful and dangerous at night,[247f] and it behooved mortals therefore to guard themselves most zealously against their attacks and to give them no opportunity to work their evil wills. To leave the corpse of the executed criminal unburied, and particularly to leave it suspended upon the tree, where it had been exposed and subject to the revilings of all who saw it, would have been an extreme affront to the ghost, which he would be sure to avenge in most extreme manner during the nightly period of his power. The only effective safeguard was, of course, to give the corpse proper sepulture before nightfall. Just this the law commands. It is clear therefore that we must render כי קללת אלהים תלוי "for a corpse suspended (for exposure to the gaze of a hostile and reviling public) is an affront to a (its) ghost." This accords fully with the manifest import of this law. And it is clear too that this law has precisely the same belief or superstition underlying it and is animated by precisely the same general purpose as the interesting ritual law in vv. 1–9 of this same chapter, viz. to protect the people against the dread attacks of a ghost, particularly evil-intentioned because it had not received proper burial.[247g] But with this interpretation of this law so well established, and the characteristic motivation given in v. 23b, that without proper burial the land would be defiled, precisely the same motive which is implied in vv. 8–9 for the parallel ceremony in vv. 1–9, a motivation which, we have seen, is characteristically Deuteronomic and in accord with the dominant spirit of early post-exilic Judaism,[247h] we may conclude with practical certainty that this law, as well as that in vv. 1–9, both couched in Deuteronomic *mišpaṭ* form though altogether ritualistic in import, are of post-exilic Deuteronomic authorship.[247i] These two laws may accordingly be regarded as striking and confirmatory instances of the spirit of the post-exilic Deuteronomic *mišpaṭ* and kindred legislation which we have posited.[248]

[247f] For evil spirits active at night cf. Wellhausen, *Reste des altarabischen Heidentums*,[2] 151; Musil, *Arabia Petraea*, III, 319ff., 429; Bauer, *Volksleben im Lande der Bibel*, 212; Canaan, *Aberglaube und Volksmedizin im Lande der Bibel*, 8, 12.

[247g] Menes (*op. cit.*, 118f.) offers an altogether different explanation of this law. Citing II Sam. 21.1ff., he contends that, not the fear of the ghost of the unburied corpse, but merely the desire to perform proper burial rites for him prompted the burial on the same day. He contends too that the assumption of the fear of a ghost in ancient Israel is unevidenced and groundless. Yet a moment's thought might have suggested that this is unquestionably the basic thought of the peculiar and undoubtedly ancient rite recorded in vv. 1–9 of this very chapter. He fails to realize too that it was always the fear of the dangerous ghost among primitive peoples which prompted the speedy burial of a corpse, and particularly before nightfall of the day of death. He holds also that קללת אלהים means "blasphemy," basing his conclusion upon passages such as Ex. 22.27; Lev. 24.15 and Job 2.9. He does not appreciate, however, that in every one of these cases it is always the verb, קלל, and not the noun, קללה, which is used, and that likewise every one of these cases deals with a blasphemous utterance, and not with a blasphemous or defiling act or condition, such as is the case here. Therefore, while admitting the ingenuity of

---

Menes' explanation of the law, its utter groundlessness becomes also equally apparent.

[247h] According to Pedersen (*Der Eid bei den Semiten*, 74) the effect of the corpse remaining suspended upon the tree over night would have been to make the land accursed. But undoubtedly the primitive concept underlying all this was, as has been said, that the ghost of a corpse remaining unburied over night was believed to be a dangerous, evil spirit. However, by the time of the formulation of this characteristic Deuteronomic law the determining motif had unquestionably become that which we have here intimated, and which is actually stated in v. 23b, and which, as we have seen, influenced so much of the post-exilic Deuteronomic legislation.

[247i] It should be clear, of course, that this refers only to the literary form of the law and its presence here. The underlying superstition naturally had its roots in early Semitic animism and persisted steadily through all the stages of Israelite religious evolution down to the post-exilic period.

[248] It may perhaps be argued that the conclusion that the law in Deut. 21.22–23 commands that the corpse of every criminal executed for any crime whatever, and in any manner whatever, even by stoning, be suspended on a tree refutes our earlier conclusion that execution by stoning was employed just because it obviated the necessity of subsequent handling of the corpse, with the consequent result that the defilement and sin, heaped up in the body of the executed criminal, would be communicated again to those who would handle the body. It would seem also to refute the hypothesis which we have suggested in note 184, with regard to cairns erected over the corpse of the stoned criminal. Unquestionably the corpse of a person executed by stoning would have to be handled in order to be suspended upon a tree; but the defilement thus communicated to the few persons who handled it could easily be removed in the customary ritual manner. This would not obviate at all the fact that in this way the defilement thought to rest upon all Israel could be communicated to and concentrated in the criminal thus executed. And the

In Deut. 25.1–3 another *mišpaṭ* occurs the exact origin of which is difficult to determine. The *mišpaṭ* provides that if (two) men have a case at law and they bring the matter before the court, and the court pronounces its decision, and it declares the one party in the right and the other in the wrong, and then if the latter be sentenced to be beaten, and the judge has him thrown down and beaten in his presence, with the number of blows (to be dealt) conforming to the crime, he may have no more than forty blows dealt him, lest, if he has him beaten more than this, an extremely severe beating, your brother would become of light esteem in your eyes. The exact meaning of this *mišpaṭ* is not certain. If the protasis is construed as ending with v. 2, as interpreted above, then the *mišpaṭ* merely prescribes the maximum number of blows which might be dealt a person found guilty of any crime for which beating is the established penalty.

But if, as is also possible, though less probable, the protasis ends with v. 2a, we must translate, "And if the latter be sentenced to be beaten, then the judge shall have him thrown down and beaten in his presence with the number of blows conforming to the crime. He may have no more than forty blows dealt him, etc." In this case the purpose of the *mišpaṭ* is twofold, viz. not only to fix the maximum number of blows which might be dealt the criminal, but also to provide both that the number of blows shall conform to the character or degree of the crime and also that the sentence shall be executed in the actual presence of the judge who imposed the sentence. This last provision would, of course, imply that if the judge must himself witness the execution of the sentence, he would naturally feel a larger sense of responsibility in imposing it and probably also would be more inclined

very fact that Josh. 8.29 expressly provides that, after the corpse of the king of Ai, who had been hung, was taken down from the tree just before sunset, a cairn of stones was erected over it, while Josh. 10.27 provides for a somewhat similar and altogether comparable procedure with the corpses of the five Canaanite kings which had been suspended, proves rather conclusively that the erection of such cairns or stoneheaps over the bodies of those who were first stoned and then hung on a tree was a regular procedure. In this connection too it may be noted that a cairn was erected over the corpse of Absalom, who also, in a sense, had been suspended on a tree (II Sam. 18.17). (For these suggestions I am indebted to my colleague, Dr. Sheldon H. Blank.)

to be lenient in fixing the exact number of blows to be dealt the criminal.[249] With either interpretation, however, it is clear that the basic purpose of the *mišpaṭ* is to fix a more lenient procedure than would in all likelihood have obtained had the matter been left entirely to the arbitrary, unregulated and personal decision of the judge.[250] This seems to point to a late rather than an early authorship, and to suggest that this *mišpaṭ* too is of late post-exilic, Deuteronomic composition.[251]

---

[249] This would then be a provision of the same character and import as that in 13.10aβb; 17.7a, that the witness or witnesses must cast the first stone. But, as we have seen, those passages are undoubtedly late, post-exilic insertions into their respective *mišpaṭim*. This would tend to indicate that, if this second interpretation of this *mišpaṭ* be correct, the entire *mišpaṭ* must be quite late. More probably, however, the ancient custom required that the judge witness the execution of the sentence which he had imposed, just as it also undoubtedly required that the number of blows inflicted in punishment conform to the degree of the crime. These considerations suggest that our first interpretation of the *mišpaṭ* is more probably the correct one. This too is the implication of the fact that v. 3 has no introductory nor connecting particle. The introduction in this manner of the apodoses of the conditions set forth in these *mišpaṭim* is quite common; cf. Ex. 21.20f., 22, 26f., 28f., 31f., 34, 36, 37; 22.1f. and *passim*; Deut. 22.23; 24.4. It is noteworthy in this connection that the use of the connecting particle seems to be far more common and regular in the *mišpaṭim* in Deuteronomy than in those in C. Perhaps the lack of use of such a connecting particle in introducing the apodoses of the conditions in these *mišpaṭ*im may be regarded therefore as an indication, though by no means an infallible one, of the relatively early date of a *mišpaṭ*.

[250] All the more significant when we realize that none of the so-called Old Oriental codes has any law corresponding to this, and that blows in varying number considerably in excess of this and ranging up to one hundred blows in the Assyrian Code (II, §8) are specified. The Koran (Sura 24.2, 4) also prescribes one hundred blows each for the adulterer and the adulteress and eighty blows for the person who brings a charge of adultery falsely. Eighty blows is likewise the punishment which Islamic law prescribes for drunkenness. (Rutter, *The Holy Cities of Arabia*, II, 102). This provision is all the more interesting and significant in the light of Burckhardt's statement (*Notes on the Bedouins and Wahábys*, 70f.) that corporal punishments are entirely unknown among the Arabs, and that every blow dealt by one man to another must be properly compensated for by law. Burckhardt's statement is apparently contradicted, not only by the above cited provision of the Koran, but also by illuminating cases of whipping as a legal punishment cited by Palgrave, *Central and Eastern Arabia*, 96; Doughty, *Arabia Deserta*, I, 14; II, 368; Kelly, *Syria and the Holy Land*, 298. In the majority of these cases the condemned person is laid upon his face upon the ground, in the presence of the sheikh or judge who imposes the sentence, and the blows are usually

In Deut. 25.11–12 a *mišpaṭ* of peculiar import occurs. If two men are engaged in a brawl and the wife of one draws near to help her husband against his adversary and she puts forth her hand and lays hold of the latter's private parts, then you shall cut off her hand; your eye shall not pity. The use of the second person singular in the apodosis of the *mišpaṭ* is quite conclusive proof that the *mišpaṭ* is not old, but is in all likelihood of Deuteronomic origin and authorship. This too is the implication of

administered to the back rather than to the soles of the feet. Obviously this practice parallels very closely that recorded in the Biblical *mišpaṭ*. Nor, despite appearances, is there any contradiction between all this evidence and Burckhardt's statement. For these are all cases or records of punishment of city dwellers and reflect the practice among the urban population and the fellaheen. On the other hand, Burckhardt's statement applies to the Bedouin alone, and illustrates convincingly the Bedouin attitude toward blows dealt with a stick or fist. The latter suggest the treatment dealt to a slave, and this the free-spirited nomad resents bitterly (cf. above, note 47). But just this is, as we have seen, the consideration underlying the *mišpaṭ* in Ex. 21.18f. It is clear therefore that that *mišpaṭ*, and also the one following it in vv. 20–21, 26–27, have as their cultural background a nomad point of view persisting into an agricultural environment. This in turn points to two important conclusions, (1) that these two *mišpaṭim* developed spontaneously in Israel, and have no dependence whatsoever upon laws in other Old Oriental codes, and (2) that they must have begun to evolve at a time when Israel's nomad life was as yet not too far in the past for the nomad point of view to persist as a strong motivating force in social custom and in law.

In passing we may take note of Jirku's suggestion (*Das weltliche Recht im Alten Testament*, 106f.) that the limitation here of the number of strokes to forty is due in all likelihood to the symbolism of forty as a holy number rather than to ethical considerations. This is, however, probably correct only in part, for unquestionably humanitarian considerations also motivated this law.

[251] It has in common with the *mišpaṭ* in 21.22–23 that both *mišpaṭim* seem to regulate the application in a more enlightened and cultured age of old, established methods of legal punishment. In all probability within the *mišpaṭ* itself v. 3b is a late, explanatory gloss, which gives to the *mišpaṭ* a motivation which it did not possess originally; for it is fair to presume that the basic and original purpose of the *mišpaṭ* was, not so much to protect the dignity and honor of the culprit, but rather to safeguard him against a punishment too severe and possibly regarded as endangering his life. Probably too in v. 2 the use of והיה אם to introduce the subordinate condition may be regarded as indicative of Deuteronomic authorship; cf. above, note 154.

the concluding phrase, "Your eye shall not pity." We have already considered the meaning of this charge, and found that it expresses directly the rigorous spirit of early post-exilic Deuteronomic legislation. And this accords too with the content of the *mišpaṭ*. For unquestionably the import of the *mišpaṭ* is that it was the fact that the hand of the woman had grasped the private parts of a man not her husband which justified the extremely severe penalty prescribed here. The implication is obviously that her hand had by this act become defiled; and that which had become defiled must be destroyed as unfit for participation in the life of the community, pure, holy and consecrated to the service of Yahwe dwelling in its midst.

To understand the *mišpaṭ* fully we must reconstruct its actual background. It seems to picture a scene such as this: A and B have been fighting, and A has cast B to the ground and has either leaped upon him or is bending over him, presumably to dispatch him. In this position his male organs are exposed from the rear. The wife of B, seeing her husband's desperate situation, intervenes to save him, approaches A from the rear and unexpectedly seizes hold of his organs and diverts A's attack to self-protection against the new adversary and thus, of course, actually rescues her husband. Obviously the *mišpaṭ* conceives of her purpose as laudable, but the manner in which it is achieved as unfortunate in character and results, since her hand has become defiled thereby and must consequently be cut off.

But unquestionably back of this *mišpaṭ* lies an older and more fundamental idea and principle. Upon this considerable light is shed by Matt. 5.27–32. That section of the Sermon on the Mount deals with the sin of adultery. It reads: Ye have heard that it was said, Thou shalt not commit adultery: but I say unto you, that every one that looketh on a woman to lust after her hath committed adultery with her already in his heart. And if thy right eye causeth thee to stumble, pluck it out, and cast it from thee; for it is profitable for thee that one of thy members should perish, and not thy whole body be cast into hell. And if thy right hand causeth thee to stumble, cut it off, and cast it from thee: for it is profitable for thee that one of thy members should perish, and not thy whole body go into hell. It was said also, Whosoever shall put away his wife let him give her a writing of divorcement: but I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress: and whosoever shall marry her when she is put away committeth adultery.

It is clear from the context here that the sin to which improper use of either hand or eye might lead, to which this passage refers, is connected closely with adultery. The implication here with regard to the hand is that it has touched the forbidden private parts of the paramour and thus has become defiled. Moreover, it is clear from the context that the underlying thought here is not that the cutting off of the hand is a form of punishment, since it is charged to be self-inflicted, but that it is an expiatory act, a sacrifice of purification as it were, which has the specific effect of redeeming the sinner from the consequences of his sin, viz. eternal punishment in Gehenna.[252]

Furthermore it is significant that Matt. 5.31 seems to refer directly to Deut. 24.1,[253] a passage which stands in close proximity to 25.11–12. It is impossible therefore not to conclude that back of the charge in v. 30 to cut off the offending and misleading right hand is the thought of Deut. 25.11–12. This too corroborates our conclusion that the underlying principle of this *mišpaṭ* is not at all the idea of actual punishment of the woman for a sin or a crime, which was in itself no crime at all, but which was actuated by a motive essentially laudable, viz. to deliver her husband from a more powerful and threatening adversary, and which would undoubtedly not have even been regarded as a sin if her hand had touched some other part of B's body. Unquestionably the underlying principle is that, despite the laudability of her purpose, the woman's hand has been defiled and that by cutting it off expiation is made not only for her but also for the entire community, which was, in theory, likewise defiled by her involuntary act.

---

[252] This is also the implication of the parallel passages in Matt. 18.7–9; Mark. 9.43–47. Both of these passages are undoubtedly secondary and late insertions, since neither has the slightest apparent connection either with what precedes or what follows. Moreover, Matt. 18.7–9 in particular manifestly interrupts the originally direct connection between vv. 1–6 and 10.

[253] It is true, as we have shown, that the *mišpaṭ* in Deut. 24.1–4 does not itself command the giving of a bill of divorce, but merely assumes this as an old, established procedure and actually deals with another, though closely related legal problem. But since this is the only Pentateuchal law which makes mention of the bill of divorce, and since, moreover, it might easily be, and has in fact quite generally been misinterpreted as actually commanding the giving of the bill of divorce, there can be no question that this is the passage to which Matt. 5.31 actually refers.

The matter might rest here and be regarded as comparatively simple, were it not for the fact that a *mišpaṭ* which parallels this closely, occurs in the Old Assyrian code, §8. It says: If a woman in a fight injures the testicle of a man, one of her fingers shall be cut off; and if in the fight she injures both testicles, both her (breasts?)[254] shall be cut off. Apparently the Biblical and the Assyrian *mišpaṭim* have much in common, and in fact deal with the same theme. And if so then of course the question of relationship between the two *mišpaṭim* would arise and demand answer. But the similarity between the two *mišpaṭim* is only on the surface. Manifestly the Assyrian *mišpaṭ* deals with a question of crime and its punishment. To destroy a man's testicles, and thereby his hope of progeny, was apparently regarded as a crime of first magnitude, second only to murder. Therefore a severe penalty was justified. That this crime was committed in a fight, and therefore could hardly have been premeditated, seems not to have been considered an extenuating circumstance.[255] But this is a point of view altogether different from that of the Biblical *mišpaṭ*, where, as we have just seen, not punishment but expiation is the basic principle of the legislation, and where also there is no question whatever of destroying a man's testicles, and with this his hope of future offspring as well as his own manly nature and vigor, but only of touching, or at the most taking hold of, not merely the testicles, but rather the entire male organ or any part thereof.

---

[254] Jirku's suggestion (*Das weltliche Recht im Alten Testament*, 122). Jastrow (*JAOS*, 41 [1921], 16) suggests "the fingers of both hands they mutilate."

[255] Nor is it at all clear just why this law should consider only the case of a woman being the person who inflicted the injury in question, and not of a man doing this, unless it be that the *mišpaṭ* rests upon a basic consideration of sexual relations of some kind, which implied that for a woman to touch the sexual organs of any man, other perhaps than her husband, no matter for what cause, was an impure and defiling act. It must be admitted that the entire matter is rather obscure.

Moreover, the punishment of cutting off the hand is a punishment by no means peculiar to Biblical and Assyrian legislation. CH, §195 prescribes the cutting off of both hands as the punishment of the son who strikes his father. Likewise cutting off of the hand is the punishment specifically prescribed in the Koran for theft,[256] and it is still enforced in various parts of the world of Islam, particularly in Arabia.[257] Manifestly the principle underlying all these cases is that that organ of the body which commits the crime shall be destroyed in punishment. From this it may well be inferred that this was a form of punishment peculiar to the primitive Semites, which, in the course of Semitic cultural evolution in various lands, underwent various modifications, all tending in the main toward the gradual abrogation of this barbarous practice. In Israel the custom persisted only in the one single case recorded in the *mišpaṭ* in Deut. 25.11–12; and, as has been said, even here it has all the appearance of an ancient, half-outgrown practice, revived in the course of time in response to the spirit of an age extreme and exacting in its treatment of sins and crimes, particularly those which seemed to partake of the nature of ritual defilement, an age likewise strongly inclined towards punishments which seemed to have the added effect of an expiation of the sin or crime because of which they were imposed. Certainly there is every reason for regarding this particular *mišpaṭ* with its peculiar offense and the unduly severe penalty prescribed as altogether of Israelite origin and character, and, despite the seeming parallelism with the Assyrian law, in no wise dependent upon it. But if it be recognized as a *mišpaṭ* of Israelite origin alone, then the internal evidence of style and content and the added fact that it occurs in Deuteronomy point strongly to the conclusion suggested above, that it is a *mišpaṭ* of relatively no great antiquity, but is in content as well as in form and location, the product of post-exilic, Deuteronomic, ritualistic legislators.

---

[256] Sura 5.42.

[257] Cf. Doughty, *Arabia Deserta*, II, 318f., 368; and above, note 79.

But one Deuteronomic *mišpaṭ* remains to be considered, that in 19.11–13.[258] This passage is couched in typical *mišpaṭ* form, coupled with the characteristic Deuteronomic concluding formulas, "thine eye shall have no pity upon him," and "and thou shalt purge from Israel the blood of the man unduly slain,[258a] so that it may be well for thee."[259] Likewise the content of the passage is of the typical *mišpaṭ* character. It might accordingly be inferred that, after the characteristically Deuteronomic editorial addition in v. 13 has been removed, what remains, viz. vv. 11–12, will constitute the original, pre-Deuteronomic *mišpaṭ*.

Such is, however, not at all the case. A moment's thought shows that this *mišpaṭ* must be distinctly Deuteronomic in authorship. For obviously it is dependent upon vv. 1–10 preceding, and these verses contain the provision for the specifically Deuteronomic innovation of the cities of refuge, the substitute for the pre-Deuteronomic local sanctuaries, desecrated and destroyed and with their authority nullified completely by the Deuteronomic Reformation. It follows therefore that vv. 11–12, which presume these cities of refuge, must be a *mišpaṭ* of Deuteronomic authorship.[259a]

---

[258] For the analysis of vv. 14–21 of this chapter and their relationship to vv. 1–13, cf. above, pp. 72–77.

[258a] For this rendering of דם נקי cf. above, note 52.

[259] Here it is particularly apparent that the execution of the murderer is regarded not merely as a punishment for his crime but also as having expiatory effect, resulting in specific benefit for the entire people; cf. also v. 10.

[259a] This becomes all the clearer and more significant if, following the suggestion of Nicolsky ("Das Asylrecht in Israel," *ZAW* 7 [new series] [1930], 151ff.), we recognize that Josh. 20, which deals likewise with the question of the cities of refuge, and which is in the main P, contains in vv. 3–6 considerable material which is unquestionably Deuteronomic. This condition is emphasized particularly by the fact that vv. 4–6 are missing completely in LXX B. This suggests that these vv. are not original in Josh. 20, but were inserted there from some other position, in which they stood originally, at a date so late comparatively that at the time the LXX translation was made they had not yet been incorporated into all extant Hebrew versions of the book. Their unmistakably Deuteronomic character, all the more apparent by contrast with the many obvious signs of Priestly composition in the remainder of the chapter, suggests in turn that these vv., or at least the nucleus of them, stood originally in Deut. 19. Careful consideration of that chapter confirms this conclusion strongly. It needs only superficial consideration of that chapter to realize

But it is equally certain that not only this *mišpaṭ* but also the legislation in vv. 1–10 are based upon an older, pre-Deuteronomic *mišpaṭ*. In the first place vv. 4–6 deal with a *mišpaṭ* prob-

that vv. 4–5, which define by a number of illustrations just what is meant by unintentional murder, disturb the close connection between vv. 3 and 6, and must therefore be an editorial, explanatory gloss. Likewise vv. 7–9, which deal with the question of three eventual additional cities of refuge, are also unquestionably a late, editorial expansion of the original text. It is significant in this connection that v. 10 has no immediate connection with or dependence upon the thought of the eventual necessity of three additional cities, contained in vv. 7–9, but depends rather upon the main thought of the original section of this legislation, viz. that of the three original cities of refuge.

Now it is so significant as to be practically convincing that Josh. 20.4–5 fits in perfectly between Deut. 19.6 and 10. With the possible exception of the insertion of the one word הרצח after ונס of Josh. 20.4, for the sake of clarity, and without the change of a single additional word or letter, these two vv. fit into the context of Deut. 19.6 and 10 perfectly. And not only does Deut. 19.10 follow immediately and perfectly upon Josh. 20.5 and round out and complete its thought adequately, but also the insertion of these two vv. here supplies a thought which is absolutely essential to the legislation and the absence of which makes it limp exceedingly. For Deut. 19.6 deals with the question of what might happen if the blood-avenger should encounter the murderer before the latter attains to the city of refuge. The next two logical and essential thoughts would then be, of course, as to the procedure in case the murderer reaches the city of refuge safely, and then after that the procedure in case the blood-avenger comes and demands of the elders of that city that they surrender the murderer to him. Just these two cases are dealt with fully in Josh. 20.4–5. There can therefore be little doubt that these two vv. stood originally in Deut. 19, between vv. 6 and 10, and were, for some reason no longer comprehensible, removed from there and transferred to their present position in Josh. 20 by the late editors who made provision for three additional cities of refuge by substituting the present Deut. 19.7–9 in their place. This substitution, of course, left Deut. 19.10 entirely without connection with what now precedes it.

This conclusion is confirmed by the fact that Deut. 19.11–12 manifestly assumes the presence in this chapter of Josh. 20.4–5, and in just the position which we have suggested, for it deals with the alternative phase of the situation with which Josh. 20.5 deals, viz. what shall be the procedure of the elders of the city of refuge in case it be found that the murder was, not unpremeditated, as in Josh. 20.5, but was unquestionably premeditated. Without the presence of Josh. 20.4–5 between Deut. 19.6 and 10, vv. 11–12 are hardly a complete unit with the legislation in vv. 1–10. But with Josh. 20.4–5 inserted in the place indicated, the unity of the entire legislation in its original form, viz. Deut. 19.2–3, 6; Josh. 20.4–5; Deut. 19.10–12, is self-apparent.

lem[260] and imply clearly the existence of an older *mišpaṭ* the application of which to the new conditions created by the Deuteronomic Reformation this legislation seeks to define. This too seems to be the implication of the expression ולו אין משפט מות in v. 6. And this is, moreover, certainly the import of the statement in 22.26b. From the evidence of these two passages alone we may conclude with certainty that an ancient *mišpaṭ* must have been current in Israel in the pre-Deuteronomic period which prescribed, first, that in case of wilful murder the murderer should be put to death by the "blood-avenger," and second, that in case of accidental or unpremeditated manslaughter the murderer should have the right of sanctuary at any of the local shrines.

Vv. 11–12 are clearly based upon a third provision of this older, pre-Deuteronomic *mišpaṭ*, viz. that if the man who had committed wilful murder flees for sanctuary to one of the local shrines, and meanwhile it becomes established that it was actually a case of wilful murder and not of mere manslaughter, then the elders of his town, in other words his legal representatives, some of whom were presumably his own relatives, should send and forcibly take him from the shrine and from under the protection of the Deity there, and deliver him over to the "blood-avenger" to be put to death. For this earlier provision of the local shrines this new, Deuteronomic *mišpaṭ* substitutes the cities of refuge.

From the evidence of this passage, 19.1–13, coupled with the significant reference to the old *mišpaṭ* in 22.26, it is a simple matter to reconstruct the content of the original, pre-Deuteronomic *mišpaṭ*. In fact it would be no difficult undertaking to reconstruct even the original wording thereof with fair probability of correctness.[260a] But just this *mišpaṭ* was unquestionably what stood orig-

---

In Josh. 20.3 such Deuteronomic elements as do exist, notably the expressions לנוס שמה רצח מכה נפש בבלי דעת, are due, of course, to editorial influence. The same would be true of v. 6, unless it be, as does actually seem to be the case, that that entire v. is P, or perhaps better RP.

[260] V. 5a is, as Steuernagel correctly interprets it, only an illustration of, and not at all a case alternative to the general principle stated in v. 4. Moreover, v. 5b seems really to be the direct continuation of v. 4, and not of v. 5a. V. 5a therefore gives the impression of being a late gloss. Likewise vv. 7–10 are obviously secondary and late.

[260a] Cf. above, p. 62.

inally in Ex. 21.12–14. We have seen that in that passage v.12 is, in all likelihood, a fairly late substitute for the original statement of the general principle, couched unquestionably in characteristic *mišpaṭ* form, that the murderer shall be put to death by the blood-avenger. V. 13 then, in its original form, offered the first modification of this general and basic principle, viz. the case of accidental or unpremeditated manslaughter. It is quite likely that v. 13a retains in the main the language of the original *mišpaṭ*.[261] On the other hand, v. 13b is clearly the work of a late editor, probably Deuteronomic, since it obviously rests upon the assumption of the single, central sanctuary.[262] This too is the import of v. 14b, while the use of the first person in מזבחי and of the second person in תקחנו indicates the hand of the Deuteronomic editor. But again, in all likelihood, v. 14a retains the language of the original *mišpaṭ* practically intact.[263] There can accordingly be little question that the old, pre-Deuteronomic *mišpaṭ*, upon which the legislation in Deut. 19.1–13 is based and to which Deut. 22.26 likewise refers, stood originally and in its original form in Ex. 21.12–14, a form which, as we have seen, and as we shall have even more convincing proof of later, has been greatly modified by late Deuteronomic, and perhaps even by Priestly editors.

---

[261] In all likelihood, however, this was introduced by ואם in the manner characteristic, as we have seen, of the older *mišpaṭim*.

[262] This will be discussed thoroughly later when we consider the full implication of that obviously late revision of the entire legislative section of the Book of the Covenant which represents the Deity speaking in the first person. We shall see that that revision is Deuteronomic and in the interest of the single, central sanctuary. Whether this modification here of vv. 13b and 14b implies that in the first stage of the Deuteronomic Reformation the single, central sanctuary was intended to serve as the only place of refuge for the entire land, and that only somewhat later, when this was found impracticable, the institution of the cities of refuge was devised and legislated for in Deut. 19.1–12, still presumably by the original Deuteronomic legislators, can not of course be determined with certainty for lack of sufficient evidence; but it does indeed seem highly plausible.

[263] Probably instead of וכי the original read ואם. In all likelihood too the original of v. 14b provided that the murderer was to be taken from his place of sanctuary in the local shrine and turned over to the "blood-avenger" by the elders of his city, precisely as in Deut. 19.12.

This concludes our detailed analysis of the *mišpaṭim* which occur in Deuteronomy. It will, however, be well to compare the results of this analysis with the results of our analysis of the *mišpaṭim* in C.

IV. Comparison of the *Mišpaṭim* in Deuteronomy with Those in the Book of the Covenant

We have seen that the *mišpaṭim* in Deuteronomy may be divided into two groups, those which are apparently of pre-Deuteronomic origin and have been borrowed by post-exilic Deuteronomic editors from their original source and incorporated into D, in almost every case with the addition of the characteristic and significant motivating clause, ובערת הרע מקרבך, and occasionally with other, similar, amplifying clauses, and those *mišpaṭim* which are or seem to be of specifically Deuteronomic, even though in the main likewise of post-exilic, authorship. To the latter group belong the *mišpaṭim* in 13.2–6; 7–12; 13–19; 15.12–18; 17.2–7; 8–13; 19.11–13; 21.22–23; 24.7; 25.1–3; 11–12. To the former group belong the *mišpaṭim* in 19.16–21; 21.15–17; 18–21; 22.13–29; 24.1–4; 25.5–10. We have likewise seen that the two *mišpaṭim* in 15.12–18 and 19.11–13, both belonging to the first group, are really Deuteronomic adaptations of two *mišpaṭim* which stand, or at least stood originally, in C.

It is, however, naturally the second group, the older *mišpaṭim* in D, which interests us most at this moment in our investigation, for it is, of course, between these and the *mišpaṭim* in C that the most significant comparison must be made. We have seen that of these *mišpaṭim* the group in Deut. 22.13–29, and especially the single *mišpaṭ* in vv. 28–29, are so closely related to the *mišpaṭ* in Ex. 22.15–16 that the conclusion is unavoidable that in the original *mišpaṭ* source Ex. 22.15–16 followed immediately upon Deut. 22.28–29, and that in this source Deut. 22.13–29 plus Ex. 22.15–17 constituted a definite section thereof, dealing with the general theme of sexual offenses forbidden under the prevailing ethics and institutions of marriage.

When we compare carefully the older *mišpaṭim* of Deuteronomy with those of C three significant differences become apparent. The first of these is the fact that, so frequently as to seem almost a regular characteristic of them, the Deuteronomic *mišpaṭim* are motivated, i. e., the underlying basis or justification of the *mišpaṭ* is given, while not a single instance thereof occurs in the *mišpaṭim* in C.[263a] As instances of such motivation of the Deuteronomic *mišpaṭim* we may cite 21.17b;[264] 22.19aβ, 21aβ, 24bc, 26aβb–27, 29bβ;[265] 24.4aβ;[266] 25.3b. The presence of these motivating statements in these Deuteronomic *mišpaṭim* gives to them the appearance of greater length and prolixity than the *mišpaṭim* in C. These latter are, in turn, characterized by unusual conciseness, coupled with remarkable exactness of expression. This latter undoubtedly reflects the true, original *mišpaṭ* form. Unquestionably therefore some of these motivating statements in the Deuteronomic *mišpaṭim*, though, as we shall see, by no means all of them, represent, to a certain extent at least, definite liberties with the original *mišpaṭim*, comparable to the various additions and internal modifications of the original language which we have already noted, taken by the Deuteronomic editors in the process of borrowing these *mišpaṭim* from the original source and adapting them to the conditions and points of view of the early post-exilic age.

[263a] Ex. 21.8b (בבגדו בה) we have already set down as a gloss (cf. above, note 40). Ex. 21.21bβ (כי כספו הוא) is absolutely the only other motivation of a *mišpaṭ* to be found in C. Moreover, careful consideration suggests that this passage too is a gloss; for it was hardly correct to say that a Hebrew slave was his master's *kesef* when in the seventh year he could go free. Probably the real reason why there was no blood-revenge in the case described in this passage was that this flogging was regarded as ordinary punishment which a master had a right to inflict upon any of his slaves, Israelite or non-Israelite; but this is by no means exactly the same as to say that the Israelite slave was his master's *kesef*. Furthermore, actually no motivation was needed here, for the entire matter was perfectly obvious. We would have expected far more a motivation of the fact that Ex. 21.37 provides for a four for one repayment in case of the theft of small cattle but a five for one repayment in the case of large cattle. The fact that all explanation of a matter as obscure as this is lacking is significant, and quite characteristic of the *mišpaṭim* in C. But all the more this tends to indicate that Ex. 21.21bβ is a gloss. But if so, then our statement is justified, that not a single *mišpaṭ* in C was in its original form motivated in any way.

[264] If not the entire v. 17; for the thought of v. 17a is really implied in v. 16.

[265] But cf. Ex. 21.26f.

[266] I. e. אחרי אשר הטמאה.

But the very fact that these Deuteronomic editors should have experienced this urge to motivate somewhat the *mišpaṭim* which they borrowed, as well as the majority of the *mišpaṭim* which they themselves formulated, may well indicate one, or perhaps even both, of two things, first, that these Deuteronomic editors did not feel all too sure of themselves and of their legislative authority and therefore felt constrained to justify the *mišpaṭ* by exhibiting its internal merit and reasonableness, or, second, that, conscious of a definite antiquity of these older *mišpaṭim*, they felt that they must justify their application to the conditions of a later and presumably a more modern day by specifying the particular underlying principle which gave these *mišpaṭim* validity still in their comparatively late day. Certainly this frequency of motivation of these Deuteronomic *mišpaṭim*, in significant contrast to the *mišpaṭim* of C, is clear evidence of the fact that the editors of C were considerably earlier and therefore closer to the time of the original legislation and literary formulation of these various *mišpaṭim*.

The second significant difference between the *mišpaṭim* in Deuteronomy and those in C is the frequency with which the death penalty is provided in the former *mišpaṭim* and its comparative infrequency in the latter. In C, with the exception of the statement of the general principle of blood-revenge in the *mišpaṭ* which stood originally in Ex. 21.12, and its application to the cases dealt with in Ex. 21.20 and 22.1–2a, and apparently also to that dealt with originally in 21.23, the death penalty is provided in only one case, viz. for the owner of the goring ox, who had neglected to properly restrain the dangerous animal, in 21.29,31. And in this last case, probably in recognition that it was not a case of wilful murder, provision is made for the acceptance of ransom-money in expiation of the death. In significant contrast with this, in the twenty *mišpaṭim* belonging to the two groups of Deuteronomic *mišpaṭim* the death penalty is specified twelve times, while one other *mišpaṭ*[267] deals with a matter incidental to the infliction of the death penalty and two others[268] deal with physical penalties which must be regarded as quite extreme.

---

[267] Deut. 21.11–23.

It might be argued, of course, that this comparison is not altogether justified, since the *mišpaṭim* in C, as we have seen, deal with two main themes, viz. the manumission of Hebrew slaves and responsibility in the custody of domestic animals under all manner of conditions, neither of which, with but one or two exceptional circumstances, provides the slightest occasion for the infliction of the death penalty or even of physical suffering. It is self-understood that in the pre-Deuteronomic period there were plenty of occasions when the death penalty was legally applied; witness, for example, the Naboth story.[269] And since unquestionably the few *mišpaṭim* in C constitute but a comparatively small fragment of the much larger body of *mišpaṭim* which must have stood in the original source, it is quite probable that this original body of *mišpaṭim* provided many occasions when the death penalty was specified for the crime in question. In fact, just this is the implication of the fact that quite a number of the *mišpaṭim* belonging to the older group in Deuteronomy and which, we have contended, were probably borrowed from this original *mišpaṭ* source do actually provide the death penalty.

But it is by no means accidental that the Deuteronomic editors have at least borrowed such a seemingly disproportionate number of *mišpaṭim* which provide the death penalty. The reason for this is clear in the light of our investigation thus far. The selection of these particular *mišpaṭim* by these Deuteronomic editors for inclusion in the Deuteronomic Code must have been due in very large measure to the principle which, as we have seen, animated them in much, if not most, of their legislation, viz. that the death of the criminal for these offenses served not only as a legal punishment but also as a ritual expiation for the land and the people, which the crime in question had defiled, and thus made possible the continued residence of Yahwe in their midst. This is, if such be needed, final confirmation of this hypothesis with regard to the underlying motive of these Deuteronomic *mišpaṭim* which the consideration of the import of the three clauses, oft-repeated in connection with these Deuteronomic *mišpaṭim*, ובערת הרע מקרבך, לא תחוס עינך[270] and וכל ישראל ישמעו ויראו (ולא יוספו לעשת כדבר הזה), has led us to posit.

---

[268] Deut. 25.1–3; 11–12.

[269] I Ki. 21.10–15, where it is clearly implied that the established legal penalty for blasphemy, whether of Deity or king, was death by stoning. It is by no means certain that we may infer from the fact that Jezebel procured two false witnesses to testify against Naboth that already in pre-Deuteronomic times the testimony of two witnesses was necessary before the death-sentence could be imposed (cf. Deut. 17.6; 19.15; Num. 35.30 [P]). It may well be that Jezebel procured these two witnesses, not to conform to any specific law, but only to make the evidence seem convincing and the death of Naboth therefore certain. Or it may be that the provision of two witnesses here is a late reinterpretation of the story to make it conform to Deuteronomic principles. Certainly Deut. 19.16–19, a *mišpaṭ* which has not the slightest connection with the law in 19.15, immediately preceding it, and which even apparently contradicts that law fundamentally, seems to imply that, had the evidence of the one, single, false witness been accepted as valid, it would have sufficed to bring about the infliction of the death penalty upon the innocent man.

And this conclusion is borne out still further by the fact that, with but one single exception,[271] the death penalty is in every case inflicted by stoning. This is explicitly provided in

---

[270] It is not at all unlikely that the charge, "thine eye shall not pity," carries a twofold implication, a command to execute the death sentence uncompromisingly and, what is actually merely the reverse aspect of this command, a prohibition of the acceptance of blood-money in lieu of the actual execution of the death sentence. If this last assumption is correct, then the post-exilic Deuteronomic command, "thine eye shall not pity," has exactly the same import as the Priestly provision in Num. 35.31–34, and, of course, with much the same end in view.

[271] Deut. 13.16–18, a *mišpaṭ*, as we have seen, entirely of Deuteronomic origin and authorship. It provides that in case all the people of a single town apostatize they shall all be put to death by the sword and the town itself shall be burned completely. It takes but a moment's thought to realize, on the one hand, that in this particular case of the execution of the entire population of a town, death by stoning would have been impracticable at least, if not altogether impossible. And on the other hand, it is clear that the penalty which this *mišpaṭ* imposes upon the town and its inhabitants is really borrowed from the war legislation in Deut. 20.12–18, and especially vv. 16–17, that, in other words, this *mišpaṭ* treats the apostatizing town just as if it was one of the towns of the idolatrous, pre-Israelite inhabitants of the land.

13.11; 17.5; 21.21;[272] 22.21,24.[273] It is perhaps implied also in 22.22.[274] It follows accordingly, as we have suggested already,[275] that in these particular cases execution by stoning was specified because this method of inflicting the death penalty lent itself best to these particular cases in which the motive of expiation was a paramount consideration, and where, as we have suggested, not only was there no direct physical contact between executioners and executed, but also the casting of the stones from the hands of the executioners upon the body of the executed was in all likelihood thought to carry with it whatever of ritual defilement was lodged in the executioners, particularly those who had been present and witnessed the commission of the crime, and to concentrate it in the person and body of the executed. In this manner the scape-goat principle was literally enforced.[276]

---

[272] Here the verb is רגם; in all other cases it is סקל. Outside of this one passage in Deuteronomy רגם is found only in passages in Ezekiel, P, or still later writings. This may perhaps be regarded as additional evidence of the post-exilic date of this particular *mišpaṭ*. On the other hand, with the exception of Josh. 7.25 (where the hand of the editor is readily apparent) and of these Deuteronomic *mišpaṭim*, סקל in the sense of "to execute by stoning" is used only in pre-Deuteronomic writings. Inasmuch as Targum Onkelos and Targum Yerushalmi regularly employ רגם for the סקל of MT, while Targum Jonathan likewise does so quite frequently and never employs סקל itself, we may conclude that the growing use of רגם in the late Biblical literature and its tendency to supplant the older סקל was due to expanding Aramaic influence upon post-exilic Hebrew.

[273] Cf. also Ex. 19.13, where shooting (by arrows) is specified as a method of execution alternative to stoning. Both these methods of execution have this in common, that the executioner does not come into direct, physical contact with the executed and that there is a passage of a concrete object from the executor to the executed. In other words, both these methods of execution are peculiarly appropriate for the execution of persons ritually defiled, just as in this particular case.

[274] Probably in contrast to execution by burning, which seems to have been the older practice; cf. Gen. 38.24; Lev. 20.14; 21.9; cf. above, note 248.

[275] Above, pp. 89–91.

[276] It is not impossible that these considerations may have led these Deuteronomic editors to substitute execution by stoning for some other form or forms of execution which the older *mišpaṭim* in their original form may have provided. Certainly this is neither impossible nor improbable. And

Accordingly that, in contrast to the *mišpaṭim* in C, the post-exilic Deuteronomic editors should have inserted into Deuteronomy such a disproportionate number of old *mišpaṭim* which provide the death penalty, and should also have formulated so many new *mišpaṭim*, upon their own legislative authority, in the spirit of these older *mišpaṭim*, indicates that they must have lived and worked in a period which felt a distinct need for legislation of such extreme severity, and establishes beyond question both the fact of the post-exilic date of this Deuteronomic legislative and editorial process and also the relatively greater antiquity of the editorial processes by which the particular *mišpaṭim* were incorporated into C.

And finally, a third significant difference between the *mišpaṭim* in C and those in D is the fact that the former in not a single instance make reference to the judicial authorities who hear the case in question, impose the sentence and supervise its execution,[277] while the *mišpaṭim* in D, both those belonging to the older group as well as the younger ones, make frequent reference thereto. Three different groups or classes of judicial authorities are referred to in these Deuteronomic *mišpaṭim*, the town elders, the judges and the priests. We have seen, however, that in the few cases where the priests are represented as discharging judicial functions, viz. in 17.9–12 and 19.17,[278] the reference to them is an intrusion into the passage and that the *mišpaṭ* in its original form knew nothing of them.[279]

---

particularly in the case of the sexual offenses listed in Deut. 22.13–29 it seems quite likely that the original punishment prescribed, at least in those cases where both adulterer and adulteress were put to death, was death by burning; cf. note 248.

[277] In Ex. 21.23 the פללים are, as has been said, not the judges who hear the case but the referees or arbiters who appraise the amount of ransom-money which the husband demands and act as go-betweens and moderators between the two disputants until an amount mutually satisfactory is agreed upon.

[278] Cf. also 21.5 and particularly the significant statement in v. 5b. However, it is clear that v. 5 is a late insertion into this passage and that the priests had originally no role whatever in this peculiar rite; cf. v. 2, and also below, p. 226, and note likewise that v. 6 followed originally directly upon v. 4.

[279] Exactly the opposite opinion, viz. that the reference to the priests is original, and that to the judges secondary, is held by Bertholet, *Deuteronomium*,

It is a matter of considerable importance to determine the exact relation of the town or village elders and the judges to each other. And this investigation may well throw light upon the important question of the administration of law in ancient Israel and likewise upon the origin of the *mišpaṭim* with which we are dealing, and perhaps even upon the origins of other types of law.

It is noteworthy that the social background of all the *mišpaṭim* is that of Israel as a people already dwelling in Palestine, living in towns and cities and following an agricultural life primarily, with the possession of domestic cattle, for the most part at least, only incidental thereto. None the less certain institutions of desert, tribal organization persisted in Israel, and have in fact persisted in Palestine in more or less modified forms down to the present day. Among these not the least significant was the institution of the elders in Israel and the authority which they enjoyed and the functions which they discharged. In general these agreed so closely with the corresponding limited authority enjoyed and the functions discharged by the elders or *shiukh* among the Bedouin[280] that it is impossible not to regard the institution of the elders in the Biblical period as a direct development out of the corresponding institution in Israel in its pre-Canaanite, desert, nomadic or semi-nomadic days.

In the main the elders in ancient Israel discharged basic functions. For the most part in the period of fixed sojourn in Palestine they seem to have been local authorities. As such they acted as the administrators of their town, or perhaps better, as its representatives in all matters where such representation was necessary. Thus, in Deut. 19.12 they represent the town in removing from his place of refuge their fellow-citizen who had committed murder and turning him over to the blood-avenger for

---

53f.; Hempel, *Die Schichten des Deuteronomiums*, 212–222. On the other hand, Menes (*op. cit.*, 20f.; 92f.) contends that the priests, who, he holds likewise, were not at all identical with Levites, never exercised judicial functions whatever until the period of the exile (cf. Ez. 44.24; II Chron. 19.8).

[280] Cf. Burckhardt, *Notes on the Bedouins and Wahábys*, 66ff.; Featherman, *The Aramaeans*, 385; Doughty; *Arabia Deserta*, I, 248f.; Musil, *Arabia Petraea*, III, 334ff.; Kennett, *Bedouin Justice*, 13, 19, 36f.; Grant, *The People of Palestine*,² 52, 150.

execution.[281] In Deut. 21.3ff. they again represent their town in the ritual procedure necessitated by the finding of the corpse of a murdered man, the murderer of whom it is impossible to ascertain. In Jud. 8.14–16 Gideon holds the elders of Sukkot responsible for the town's inhospitable attitude toward him and his men and punishes them accordingly. In I Sam. 11.3 the elders of Jabesh Gilead carry on negotiations with Nahash the Ammonite, and in I Sam. 16.4 they come as the responsible representatives of Bethlehem to meet Samuel and to treat with him.[282]

But in addition to this important function the elders of each town acted as the local judges or court. They sat in the town gate, apparently on regular occasions or at regular intervals, and to their court local processes of law were brought for adjudication.[283] And apparently this institution of the local courts of elders sitting in the town gate persisted deep into the post-exilic period.[284]

However, among the Bedouin, the elders or *shiukh* are by no means the only judicial functionaries. Alongside of them is the *qaḍy*, who may perhaps be regarded as tantamount to the professional judge. But it would be misleading to infer from this that among the Bedouin the office or role of *qaḍy* is either elective or appointive. Rather, it is as rule heritable or transmittable in certain families. The *qaḍy* is generally a man of recognized integrity, wisdom and soundness and responsibility of judgment and well versed in desert law, either, and most customarily, through the exercise of a superior memory, or occasionally, though very rarely, through ability to read and write and to refer to written laws and judicial records.[285] To the *qaḍy* cases are brought, either those of major importance, too difficult or responsible for reference to the *shiukh*, or those in which one or both of the litigants are unwilling to abide by the decision of the *shiukh*. It is clear from this that the *qaḍy* constitutes in some respects a kind of a higher court, a court of appeal, as it were. However, even with this superior judicial authority the *qaḍy* is by no means the final legal resort of the Bedouin. Of still greater authority is the recourse to the oath,[286] or, in cases of extreme complexity and stringency, to trial by ordeal.[287] Recourse is had to these two last procedures most frequently in cases where there are no actual witnesses or where the evidence is inconclusive.

---

[281] Cf. Josh. 20.4.

[282] Cf. also I Sam. 30.26–31; I Ki. 21.8–11; II Ki. 10.1. It is probably an expression of this function as well as a definite reminiscence of actual desert tribal conditions when practically all sources agree that in the desert as well as in the early period of settlement in Palestine the elders functioned as the leaders and spokesmen of their clans and tribes; cf. Ex. 3.16, 18; 4.29; 12.21; 17.5ff.; 18.12 and *passim*; Deut. 31.9, 28; I Sam. 3.17; 5.3; 17.4, 15; 19.12; I Ki. 20, 7–8; II Ki. 23.1. The same point of view naively pictured the Egyptians as organized in like manner under the leadership of elders; Gen. 50.7. Nicolsky ("Das Asylrecht in Israel," *ZAW*, 7 [new series] [1930], 157f.) holds that in addition to their local functions the elders of Israel constituted a kind of national council (*Stadtrat*), whose function was to give counsel to the king (cf. I K. 12.6; II K. 23.1ff.; also Num. 11.16ff.). This view is held also by Menes (*op. cit.*, 21f.; 91f.), who contends in addition that one of the effects of the Deuteronomic Reformation was to limit the earlier authority of the elders.

[283] Cf. Deut. 21.19ff.; 22.15 ff.; 25.7ff.; also Amos 5.10, 12, 15., and perhaps also I. Ki. 21.8–11.

[284] Zach. 8.16; Prov. 22.22; Job. 5.4; Ruth 4.9ff. This too is the implication of such Deuteronomic *mišpaṭim* as 21.19ff., which we have set down as being of specifically Deuteronomic origin.

Now in the Bible,[288] as well as in the other Old Oriental law codes,[289] references to the institutions of the oath and trial by ordeal are sufficiently frequent to indicate that they persisted in the practice of ancient Semitic and historically contiguous peoples down to a relatively advanced stage of cultural evolution. Both institutions, however, are so characteristically primitive that it is impossible to avoid the conclusion that not only in ancient Israel but also among the Babylonians and Assyrians they represent survivals of primitive Semitic customs and institutions closely related to, and probably differing but little in principle, though localized in form,[290] from the corresponding Bedouin practices today.

---

[285] Cf. Burckhardt, *Notes on the Bedouins and Wahábys*, 68ff.; Musil, *Arabia Petraea*, III, 337; Jaussen, *Coutumes des Arabes au pays de Moab*, 181–188; G. L. Bell, *Rambles in a Syrian Desert*, 11.

[286] Cf. Musil, *op. cit.*, 338ff., and above, p. 112.

[287] Cf. Burckhardt, *op. cit.*, 69; Musil, *op. cit.*, 338ff.; my "Trial by Ordeal among the Semites and in Ancient Israel,", *Hebrew Union College Jubilee Volume* [1925], 113–144.

[288] Ex. 21.7, 8, 10 (cf. above, pp. 111–116); Num. 5.11–31.

[289] Pedersen, *Der Eid bei den Semiten*, and my "Trial by Ordeal, etc."

All the more surprising is it therefore to realize how comparatively infrequent are the references to the judge, presumably the counterpart of the Bedouin *qaḍy*, in the pre-exilic Biblical literature. The only specific references to the *šofeṭ* and his functions in pre-Deuteronomic literature seem to be Is. 1.26; 3.2; Hos. 7.7; 13.10 (?); Amos 2.3 (Moab); Mic. 7.3 (?); Zeph. 3.3.[291] These coupled with the incidental references in Gen. 19.9; Ex. 2.14, suffice, however, to indicate that the role of *šofeṭ* was by no means unknown in ancient Israel, and that the judge enjoyed a considerable measure of authority. All the more suprising is it therefore that the references to the *šofeṭ* in this literature are not more frequent and specific. The conclusion lies ready to hand that during this period the role of the *šofeṭ* in Israel, although established, was as yet by no means widespread and general.

---

[290] As, for example, in the ordeal of casting the suspected person into the river, employed regularly in Assyria and Babylonia; cf. my "Trial by Ordeal, etc.," 124.

[291] Num. 25.5 (E?) refers to the judges of Israel but in a passage so fragmentary and obscure that nothing can be made of it. I Sam. 7.16–17 and 8.1–3 represent Samuel as functioning as a kind of a circuit judge in Israel, holding court regularly, seemingly once each year, in a number of the most important centers, Bethel, Gilgal, Mizpah, with his permanent headquarters at Ramah, his home city. His sons function similarly, though corruptly, in Beer Sheba. Here the verb *šafaṭ* is used, not in the sense characteristic of the Deuteronomic framework of Judges (cf. 2.16–19; 4.4; 16.31 and *passim*; I. Sam. 4.18) viz. to govern the people and administer their affairs (so in I. Sam. 7.15; cf. likewise Is. 33.22; 40.23; Ob. 21; Ps. 2.10; 148.11; Prov. 8.16, and the Carthaginian *suffetes*, and Menes, *op. cit.*, 94) but in the specific sense of "to function as judge in a court." Scholars are in wide disagreement as to the authorship of these verses. Inasmuch, however, as 7.16–17aα and 8.1–3 are unquestionably an expansion of וישפט in 7.15 and offer a reinterpretation of it contrary to that which it usually has, it follows that these verses must be quite late. Accordingly this picture here of Samuel and his sons functioning as circuit or district judges may hardly be regarded as historically valid for the early, pre-Deuteronomic period. If it has any historical basis at all it pictures a late, post-exilic court organization based upon the provision in Deut. 16.18. Something similar seems to be implied in the obviously editorial gloss in Jud. 4.5b, that the tribes used to come up to Deborah for judgment (למשפט; note that here משפט is used as a verbal noun, i. e., as an Aramaic infinitive *Pᵉ‘al*, precisely as in Deut. 1.17). The picture of Deborah here is that of a district judge, precisely like that of Samuel in I Sam. 7.16–17 and 8.1–3, or perhaps even of the single, supreme judge of all the tribes, identical with "the judge who will be in those days" of Deut. 17.9.

And this is easily comprehensible. II Sam. 15.4 is most illuminating in this regard. It makes clear beyond question that the king regularly played the role of supreme judge in ancient Israel.[292] This is borne out fully by II Sam. 8.15; 14.4ff.; I Ki. 3.9, 16–28; II Ki. 15.5, and likewise by the distinctly post-exilic pictures in II Sam. 7.11; Is. 11.3f.; 16.5; Prov. 29.14. Manifestly the king was the court of last resort, to whom cases too difficult for local decision were referred, or to whom appeal was taken from the decision of the local courts of elders or even of the *šofeṭim*. Under the comparatively simple social organization which obtained in ancient Israel, particularly during the period of the united kingdom, or even of the divided kingdom, access to the king was free and ready so that even the humblest person could, without the least difficulty or formality, lay his case directly before the king. Under conditions such as these there would be little reason for or possibility of intermediate courts, such as the judges would undoubtedly have constituted. It seems more reasonable therefore to suppose that the development of the institution of the judges in ancient Israel went hand in hand with the development of cities of considerable size and the evolution of social life and organization in such manner as living within these cities would call forth. For in the large cities, such as Jerusalem, Shechem and the like, with their populations of composite social origins, the institution of the court of elders would unquestionably have been unwieldy if not actually impossible of organization. In communities such as this some other judicial body or authority was indispensable, such as the *šofeṭ*, appointed no doubt by the king, or at least confirmed in office by him. And actually the few references to the *šofeṭ* in the pre-Deuteronomic literature seem to associate him with the cities rather than with the villages or rural districts. We may therefore infer that while the institution of the judge was by no means unknown in ancient Israel, even from the earliest times, and had in all likelihood grown out of an institution comparable to the Bedouin *qaḍy*, it remained an institution largely undeveloped because of internal social conditions during the greater part of the period of the kingdom.

---

[292] For a detailed and illuminating picture of the same role played by Mohammed ibn Rashid at Hâyil, cf. Doughty, *Arabia Deserta*, I, 606f. David's court must have been quite similar to this.

One other condition may well have contributed to this situation. Assuming that Deut. 33.10 is original in its present position, and not an interpolation,[293] and that the poem, as all the evidence indicates, comes from the Northern Kingdom and from some time within the period 865–842 B. C., i. e. the latter part of the reign of Ahab or the reigns of his two immediate successors, then it indicates decisively that from of old the Levitical priests, alongside of the elders and the judges, exercised judicial functions of a very positive nature. They seem to have dispensed with full authority laws of two distinct kinds, *mišpaṭim* and *torot*.[294]

This matter is further illumined by the graphic picture of the judicial procedure of Moses, acting upon the advice of his brother-in-law, the Kenite Yahwe-priest, in Ex. 18.13–27.[295] Moses sits day by day to judge the people. His role here is approximately the same, in part at least, as that which the king discharged in the pre-exilic period of Israel's sojourn in Palestine. Moses is a Levite, in fact the original Levitical priest. To him all the people come with their cases and he renders his decision. Apparently these decisions consist of two kinds of laws, designated in vv. 16 and 20 as *ḥuqqim* and *torot*.[295a] The procedure too is clear. In all cases where there is a precedent, in other words a law established by an authoritative decision by Moses in some previous case more or less similar to the one in hand, the decision is given in accordance with that law or precedent. This is, of course, typical case law. It implies the preservation of definite records of these previous decisions, either in Moses' memory, or, more probably, in writing. Where there is no precedent Moses reaches a decision apparently, at least in the most difficult and intricate cases, not by consulting his own judgment alone, but by some oracular process, by means of some technique laying the case before the Deity and securing a decision from Him. This decision of the Deity of course becomes then the law for all similar cases which might arise. The legal principle is thus established. The only judicial problem thereafter is apparently how to apply the particular legal principle to future specific cases with their conditions varying more or less from the basic precedent. Presumably these laws or legal principles obtained by the decision of the Deity, no matter how communicated, are what is implied in the term *torot* both here and in Deut. 33.10. Presumably the application of established legal principles and precedents to specific cases as they might arise is the judicial procedure here connoted by the term *ḥuqqim* and in Deut. 33.10 by the term *mišpaṭim*.[296]

---

[293] And on this most scholars seem agreed.

[294] The specific nature of *torot* will be discussed fully in the next section of this work, to appear in *HUCA*, VIII (1931).

[295] As we have seen, the nucleus at least of this narrative is from K; cf. my "The Oldest Document of the Hexateuch," *HUCA*, IV (1927), 127–135.

[295a] However, neither of these terms is original here, but both are the product of RE, or even of RD; cf. "The Oldest Document," 134.

Moreover, it is clear that throughout Moses acts primarily in his priestly capacity. For both *ḥuqqim* and *torot* are stated specifically to belong to the Deity, i. e. undoubtedly to emanate from Him,[297] and in v. 15 the administration of justice in this manner is described as "inquiring of the Deity." Furthermore, acting upon the counsel of his brother-in-law, Moses appoints subordinate judges, "captains of thousands, captains of hundreds, captains of fifties and captains of tens,"[298] to whom he is to communicate the *ḥuqqim* and *torot* that they may apply these already established principles to cases which might arise, while he himself functions thereafter only in connection with the greater and more difficult cases, those apparently for which there is as yet no precedent nor established legal principle. And here his procedure continues to be as oracular priest to lay such cases before the Deity and secure decision thereof from Him.

---

[296] Or, possibly more correctly, Ex. 18.13–27 describes not two but three legal processes, (a) the actual judging, in accordance with the principles of sound common sense, of disputes, usually of a civil nature, which might arise between man and man, and for which no recourse to the Deity was needed; (b and c) the decision in more difficult and intricate cases or in cases of unusual significance where some basic principle was involved (cf. for example Num. 27.1–11; 36.1–12). These cases might be subdivided into two classes according to their nature, whether dealing with civil or religious matters, and so be designated as (b) *ḥuqqim* and (c) *torot*. All this is, however, largely hypothetical. This matter is extremely difficult of decision due to the fact that in the various ages and literary strata of the Bible the different terms for law, *dabar*, *torah*, *ḥoq*, *ḥuqqah*, *mišpaṭ* and *miṣwah* seem to have been used quite interchangeably and with wide latitude and inexactness of connotation. In Deut. 33.10 according to LXX we would expect MT to have read חקותיך instead of משפטיך; cf. Blank, "LXX Renderings of Old Testament Terms for Law," below, p. 273.

[297] So also Deut. 1.17 with reference to this same tradition. משפט is, of course, used here and also in Jud. 4, 5 with the force of a verbal noun, "giving judgment," after both the form and manner of an Aramaic infinitive *P*^{e}*ʿal* (cf. above, note 291).

Something like this procedure must be the implication with regard to the judicial functions of the Levitical priests of Deut. 33.10. Apparently they continued to discharge judicial functions such as these, alongside of the elders, judges and king, well into the period of the kingdom. And not improbably too they were the recorders and custodians of the permanent, written records of at least those laws and legal precedents which had emanated from their respective sanctuaries and priestly courts.

These considerations may well throw considerable light upon the peculiar situation in the judicial practice of Israel which the Deuteronomic Reformation brought about. Up to that time apparently the administration of justice rested in the hands of three groups or sets of authorities, viz. the town or village elders, who constituted the local courts, the judges who apparently functioned for the most part in the large cities and to a certain extent, and perhaps even completely, had superseded there the local courts of elders, and finally, the priests, or at least certain groups or classes of priests, connected, if not with all, then with certain of the larger and more important sanctuaries. Above all these, the king apparently exercised supreme judicial authority, at least in civil matters.

The evidence of the Deuteronomic *mišpaṭim* seems to be clear that throughout the Deuteronomic period and continuing into post-exilic times the local courts of elders persisted with only small diminution of their powers and functions. Yet there is some evidence that there was a tendency toward encroachment thereon.

---

[298] Cf. Kennett, *Bedouin Justice*, 37. However, both in v. 21b and v. 24b the term is probably from RD.

Thus, in Deut. 21.2 beyond all question the insertion of ושפטיך, certainly not a part of the original legislative prescription, since these judges play absolutely no role in the entire ritual procedure, represents in all likelihood, an attempt to assign to the judges a role in a ceremony of considerable importance which they did not possess originally, and to do this at the expense of the authority and prerogatives of the village elders. Likewise, as we have already intimated, the role assigned to the priests in v. 5 is of a similar nature and purpose, though manifestly of later editorial insertion. On the whole, however, it would seem that the authority of the elders as the local courts was maintained quite consistently throughout this entire period.

On the other hand, it goes without saying that with the destruction of the local shrines and the centralization of the cult in Jerusalem, the old judicial authority of the priests of these shrines was likewise forfeited. But this in turn necessitated some provision for the discharge of those particular judicial functions which had formerly been their task and prerogative. These could scarcely devolve upon the local courts of village elders, for no doubt the priests represented in a way a superior type of judicial functioning for which the local courts of elders were scarcely fitted. Obviously the former judicial functions of the priests had now to devolve upon some new type or group of legal authorities; and what group better adapted to this purpose than the judges? Unquestionably the provision in Deut. 16.18 for the appointment of judges in all the towns and villages according to the tribes makes the impression of an innovation. It is manifestly not merely a provision for the enforcement of an old, long-established institution, but it represents at the very least a definite and systematic expansion of the old institution of the judges in order to meet the situation which the Deuteronomic Reformation had brought about. This particular law here is fully intelligible only if we understand that it is making provision to fill a need which the Reformation had called forth by the abolition of the local shrines and the authority of the local Levitical priests.

But it is clear too that this provision for local judges and courts in all the towns of Judah must not only have supplanted the old priestly courts, but now, no longer associated with the local shrines, but sitting instead in the various towns and villages, this new institution of local judges must have trenched to a not inconsiderable extent upon the authority and prerogatives of the old local courts of village and town elders. This is in complete accord with the condition which we have just discussed and throws additional light upon the full import of Deut. 21.2. Moreover, alongside of these local judges stood subordinate officers, *šoṭ^erim*, "recorders," or, as it were, clerks of court. Their duties are not specified, but there is no reason whatever to doubt that they were exactly what their name designated them as, the subordinate officials who recorded the decisions of the courts and probably supervised their enforcement.[299] Not impossibly too they may have compiled from time to time systematic records of the legal principles and precedents established by these local courts for their guidance in future cases, in other words corpuses of *mišpaṭim*. This evidences clearly how well organized was the Deuteronomic system of administration of justice, at least in theory.

But in addition to these local judges, recorders and courts, it is clear from 17.8ff. that the Deuteronomic system of administration of justice went much farther than this. We have claimed that 17.1–7 is an interpolation into its present position in this chapter, the greater part of which, vv. 2–7, is the product of the post-exilic period, and has in some way become separated from its original connection with the present contents of chapter 13. Likewise 16.19–22 is an insertion into its present position. This is apparent from the facts that vv. 19–20a are obviously addressed to the judges and not to the people at large, as is v. 18, and that vv. 21–22, which, manifestly deal with an altogether unrelated theme, presuppose the existence of a single altar in the land, in other words, the single, central sanctuary.[300]

---

[299] With the possible exception of Ex. 5.6, 10, 14, 15, 19, where also the word may be RD (cf. Holzinger, in the Marti, *Hand-Commentar* series, to this chapter), the term *šoṭ^erim* occurs only in Deuteronomic writings, and these for the most part secondary, or in still later passages of the Bible (quite frequently in Chronicles). They appear usually, as here, alongside of the judges (Deut. 1.15; 29.9; 31.28; Josh. 8.33), and occasionally alongside of the elders (Num. 11.16, where the word is unquestionably an RD interpolation). Only in the above-cited verses in Ex. 5, where they are the lowest rank of supervisors of the forced labor of Israel, and are themselves Israelites, responsible to their superior Egyptian officers, and in Deut. 20.5–9 (upon which Josh. 3.2 and 23.2, 24 are dependent), where they play the role of the mustering officers of the Israelite army, as conceived by secondary Deuteronomic writers, who have complete charge of the army until, just on the verge of battle, they turn it over to its military leaders, do the *šoṭ^erim* discharge independent functions; and in even both these cases their duties are primarily those of recorders rather than of officers with powers of initiative and administration.

This would imply that 17.8ff. was the direct continuation of 16.18; and their intimate connection is, of course, self-apparent. Yet the transition from 16.18 to 17.8ff. is so sudden that it is impossible to avoid the conclusion that something else must have stood here in the D1 legislation originally which the inserted verses have in some way suppressed. Nor is it difficult to determine just what this must have been. For 17.8ff. deals with the important question of the right of appeal in civil matters from the decision of the local judge to that of a kind of supreme judge sitting in Jerusalem, at the single, central sanctuary. Unquestionably between 16.18 and 17.8ff. some provision must have stood in the original Deuteronomic legislation which provided for the institution and organization of this court of appeal, and perhaps even determined who this supreme judge should be, or at least how he should be selected or appointed. At any rate 17.8ff. takes the existence of this supreme court at Jerusalem for granted and deals only with the question, couched, as we have seen, in characteristic Deuteronomic *mišpaṭ* form, what shall be the procedure in case the dissatisfied litigant refuses to abide by the final decision of the supreme judge.[301] Apparently this *mišpaṭ* implies that this function of supreme and final judge was no longer discharged by the king, but was now, in the endeavor no doubt to perfect a well-systematized judicial organization, relegated to a specific judge. It is not impossible that this was due in part to the development by this time of a rather extensive and intricate legal system, too great and involved for the king to master, and requiring therefore the concentrated attention of one who was recognized as an authority in this field.[302]

---

[300] Cf. the most recent discussion of this particular question by König, "Deuteronomische Hauptfragen," *ZAW*, 7 (new series) (1930), 49f.

[301] Not impossibly v. 12, which alone deals actually with the question of what to do in case the litigant refuses to abide by the decision, may be a late exilic or post-exilic addition to the original *mišpaṭ*. This would then merely have instituted and defined the authority and duties of the central court. The addition would then be, in turn, the product of a later period of chaos when the authority of the central court was being weakened, and would represent an attempt to reenforce this.

It seems therefore that this developed and far-reaching system of administration of justice by well-organized courts presided over by local judges, with a supreme judge sitting in Jerusalem as the apex of the system, is altogether a Deuteronomic innovation. And that, to a large extent, these judges supplanted the pre-Deuteronomic Levitical priests at the local sanctuaries as the highest administrators of justice and custodians of the established and formulated law may be inferred, not only from the implication of the provisions in Deut. 16.18 and 17.8ff., but also from the significant fact already discussed,[303] that the reference to the priests in 17.9–12 and 19.17 is undoubtedly secondary. Unquestionably this last represents an attempt by the Levitical priests in the post-exilic period[304] to regain their former, pre-Deuteronomic, judicial authority. In this they were aided undoubtedly in no small measure by the fact that the seat of the court of the supreme judge was in the central sanctuary, the Temple at Jerusalem.[305] And unquestionably too these priests succeeded to no small extent in carrying out their plan.[306] In all likelihood the ritualistic basis for the incorporation of the various *mišpaṭim* into Deuteronomy, implied in the characteristic, accompanying editorial clause, ובערת הרע מקרבך, may be best accounted for by the assumption that this represents the work of these post-exilic Levitical priest-judges.

---

[302] However, that in the post-exilic period the king, whose restoration to the throne was, for a time at least, confidently anticipated, was expected to once more function in the capacity of supreme judge may be inferred from the provision in Deut. 17.18 (itself secondary within this post-exilic passage) that when he sits upon the throne he shall have constantly at his side a copy of the Torah in book or scroll form, of course for ready reference; cf. also I Ki. 3.9; Is. 11.3ff. The proof of the post-exilic date of Deut. 17.14–20 must be brought upon some other occasion.

[303] Above pp. 132 and 179.

[304] But probably before the ascendancy of the Zadokite-Aaronite priests under Ezra and Nehemiah.

[305] Also later the seat of the Sanhedrin.

[306] We shall have a number of instances of post-exilic priestly legislation when we consider the *ḥuqqim* in C, in the next section of this monograph, to appear in *HUCA*, VIII (1931).

From all this evidence it is clear that the judicial system of ancient Israel went through a long and interesting evolutionary process. The most primitive as well as the simplest, just as it naturally became in time the lowest, court organization, was the assembly of the town or village elders, sitting at the town gate or entrance to the village and there deliberating upon the various cases presented to them for adjudication, and acting likewise as the official representatives of their town or village upon all occasions where such representation was necessary. This court or assembly of elders presumably did not sit constantly, nor, in all likelihood, even daily. More probably it sat only upon regular occasions, perhaps only once a week[307] or perhaps somewhat more frequently, upon those days when, we may suppose, gatherings of the people for any regular cause were customary.[308] To it, in all likelihood, cases were referred of civil character alone, for the most part matters of dispute or damages between fellow-townsmen. Presumably too its decisions were reached largely by the application of the principles of sound common sense[309] to the case in hand, coupled, however, undoubtedly with reference to previous cases of similar import, so far as these survived in the memory of the old men. It may hardly be presumed that these courts of elders made any systematic recourse to written records of previous cases; but we need not hesitate to assume that their memory of precedent cases and decisions was remarkably well developed and accurate.

But alongside of these courts of elders in the villages and smaller towns a tendency seems to have manifested itself gradually to appoint regular judges, men for one reason or another regarded as experts in the legal and judicial procedure of their day. This tendency was undoubtedly furthered greatly by the natural drift of the population, with the development of commercial life, away from the country to the larger cities, and particularly to the capital. On the one hand, both the size of these cities and the unquestionable fact that their populations were far less homogeneous than those of the villages and towns, and on the other hand, the advanced cultural development of the inhabitants of the cities over those of the towns, naturally favored the administration of justice by professional judges, rather than by the more primitive and presumably less expert courts of elders. And certainly in the larger cities such courts of elders would have been quite unwieldy to be representative of all the clans, groups and classes of the people; and even at the best they would have been far less representative than the elders of a village or town.

---

[307] For this practice among the Bedouin cf. Kennett, *Bedouin Justice*, 36.

[308] From Ruth 4.2 we may perhaps infer that these local courts of elders consisted usually of ten men, and also that in addition to regular sittings they could be convened by any responsible citizen upon occasion.

[309] Cf. Kennett, *op. cit.*, 44.

Presumably too in these city courts, presided over by professional judges, the tendency was for the individual cases to be decided less on intrinsic merits in accordance with the dictates of plain common sense, but more by precedent and record. No doubt these professional judges were expected to be well versed in all the law of the land and in all previous decisions which might serve as precedents for their guidance. But the natural tendency would be, as the national culture evolved and as the body of case law became steadily more extensive and more widely ramified, for this eventually to exceed the capacity of even the most prodigious memory and for the consequent need to be experienced of careful and systematic organization and recording of these laws, in other words for the preparation of a corpus, or perhaps even of various corpuses, of them.

The evidence is clear too, as we have seen, that over and above both the courts of village and town elders and also of the professional judges in the cities, the king constituted the supreme court. To him appeal could apparently be taken by any person, no matter who, from the decision of these lower courts; and it is equally clear that such appeal was a matter of constant occurrence. The decision of the king was, of course, final, and no doubt was enforced, if necessary, by the royal body-guard, who unquestionably discharged a certain measure of what may be considered police functions. Undoubtedly any disregard of the king's decision would have been interpreted as an act of disrespect and rebellion, and therefore as demanding severe and prompt punishment.

It is also equally clear that for the guidance of the king in his function as supreme judge the preparation of a corpus of laws, and particularly of case laws or *mišpaṭim*, would in time become absolutely indispensable. For while it was undoubtedly true, on the one hand, that the king was in a very literal sense, as we shall see, the actual source of many laws, on the other hand, the judicial function was only one, and that by no means the most important and onerous of his many duties and responsibilities. In consequence, while he was to a considerable extent over and above the law, and could therefore, far more than the professional judges and even than the village courts of elders, base his decisions in the cases appealed to him upon his own personal interpretation of the principles of common sense and fundamental justice, none the less it was indispensable that he have likewise recourse to established laws and legal precedents; and for this his memory and personal knowledge could hardly suffice. The very institution of the king as supreme judge therefore made the compilation of a corpus of law, and particularly of *mišpaṭim*, an indispensable requisite sooner or later. And that the king was regularly equipped with such a corpus may, as we have seen, be inferred from the fact that Deut. 17.18f., patterning itself undoubtedly upon a definite reminiscence of the old, pre-exilic, royal practice, legislates specifically that the expected post-exilic king must always have a copy of the law at his side.

We may therefore regard it as a matter of reasonable certainty that such corpuses of *mišpaṭim* did exist in ancient Israel; and indeed the surprising, and even incomprehensible thing would have been had such corpuses not existed, rather than that they actually did exist. Moreover, the role which the king played as supreme judge would tend naturally to develop a kind of a royal corpus of *mišpaṭim*, an official code of case law, a compendium as it were, of the case law of the entire country.[310] Not improbably both the Northern and the Southern Kingdoms had each its own royal or national *mišpaṭ*-corpus; and in all likelihood too there was a very large measure of agreement and identity of decision between them.

---

[310] It is by no means improbable that the Hammurapi Code may have evolved and assumed final shape in much this same way.

Alongside of this well-developed system of local village and town courts of elders, professional judges in the cities and the king acting as supreme judge, there existed, in all likelihood, as we have seen, priests, or perhaps even groups or courts of priests, at the local sanctuaries, or at least at the larger and more important of these. Just what was the exact judicial function of these priestly judges or courts, and exactly what was their judicial procedure it is difficult, if not impossible, to determine with complete certainty. Unquestionably a large part of their judicial activity consisted in giving decisions in ritual matters, weighing ritual responsibilities, determining the nature and extent of ritual transgressions and imposing the penalty for these, prescribing the ritual procedures in all manner of cases and the like. They must have functioned also as the chief judicial authorities in all those difficult cases, such as those set forth in Ex. 22.7, 8, 10, where in the absence of direct evidence recourse was had to the oath in the name of the Deity or even to trial by ordeal.[311] Unquestionably, too, many of the questions submitted to the priests for decision required an authoritative responsum, not from the priest himself, but from the oracle. And there must, of course, have been from the earliest times a well-developed technique associated with this priestly practice of consultation of the oracle. In this technique the Levites were the particular, if not actually the sole experts. Apparently too the inauguration of this institution of oracular judgment, with all its technique, was traditionally ascribed to Moses, the Levitical priest of Yahwe, acting upon the suggestion of his Kenite, priestly brother-in-law.

But whether priestly jurisdiction extended beyond ritual matters and questions more or less remotely associated therewith, and, with the exception of cases submitted to the oath in the name of the Deity or trial by ordeal, just referred to, embraced also civil matters, affairs of the daily, profane life of the nation

[311] In this connection it is important to note that the chief officiant at the trial by ordeal among the present-day Bedouin is the *kahen*; cf. Musil, *Arabia Petraea*, III, 340.

and its citizens, is by no means clear. In other words, we cannot determine with any certainty whether the priests too constituted a court or a judicial authority which adjudicated cases of non-religious nature arising between man and man, and decided these on the basis of precedents as well as of the principles of ordinary justice and sound common sense. In such case they would have paralleled the local courts of village and town elders and of the professional judges in the large cities; and in such case too there would inevitably have been much working at cross purposes, rivalry and competition, clashing of interests and confusion and maladministration of justice. It seems hardly likely that such could have been the case. It would have been a fertile cause of unceasing turmoil and internal friction, which itself would in time have compelled some method of reorganization of the system of administration of justice and of court procedure. It seems best therefore to assume that in the pre-exilic period the judicial authority of the priests was in the main confined to cases of ritual nature or those bordering thereon, and that in general civil cases came under the jurisdiction of the courts of village and town elders and the professional judges in the cities alone.

Yet undoubtedly there were innumerable instances where cases arose of a mixed nature, and where the natural tendency would be to refer them, because of their ritualistic or oracular import, to the adjudication of the priests. Moreover, inasmuch as the priests were undoubtedly the most learned group among the people, and among them in particular the largest number of men versed in writing were certainly to be found, it is altogether probable that the recording and codifying of all laws, and even of the *mišpaṭim* or case laws, were largely the work of the priests, although acting no doubt in cooperation with the professional judges, and presumably under the instruction and supervision of the king.[311a] And as, in large measure, the compilers of the *mišpaṭ-*

[311a] After the Deuteronomic Reformation this particular function of the priests must have passed largely to the *šoṭᵉrim*, or court clerks. It is not at all unlikely that the ranks of these *šoṭᵉrim* may have been recruited to a considerable extent from the former Levitical priests. In Deut. 20.2–9, vv. 2b–4 are quite obviously a late, editorial gloss, designed to further the interests of the

corpuses of both the Northern and Southern Kingdoms, and presumably therefore also the custodians thereof, the priests, even though themselves probably not the actual judicial authorities in civil matters, were none the less in a very literal sense the transmitters unto Israel of the *mišpaṭim* quite as much as of the *torot*, precisely as Deut. 33.10 represents them.

Returning now to the *mišpaṭim* themselves, we can see precisely how they evolved. A case submitted for adjudication to one of the courts, whether of local elders, professional judges, or king, was settled regularly upon the basis of precedent, tempered to a greater or less extent in its application to the case in hand by the principles of ordinary justice and common sense. But where there was no precedent, in other words where the case in hand was altogether novel and unique, the decision had to be reached solely and entirely by the application of these principles of ordinary justice and common sense; and this case, once settled in this way, became of course the precedent for all future cases like it. The formulation of the case, as stated concisely in the protasis of the resulting law, coupled with the decision rendered by the judicial authority, stated in the apodosis, became the *mišpaṭ*, the case law, which regulated all similar cases in the future.[312]

II Sam. 14.1–20 offers an illuminating illustration of this procedure. A fictitious case is concocted by Joab and the so-called wise woman of Tekoa. Supposedly the one son of the woman, a widow, who, being without husband, must therefore act for herself, has killed his brother. According to the basic principles of the institution of blood-revenge as practiced in Israel up to that time, the murderer must be put to death; and to perform this urgent duty the entire clan,[313] i. e. the blood-relatives of the two

---

priests at the expense of the *šoṭerim*, and to assist them to regain something of their pre-Deuteronomic prerogatives and dignity. It is, of course, quite on a par with the other glosses inserted here and there into Deuteronomic legislation in the interest of the priests, which we have already noted (above, note 303).

[312] Cf. Weber, *Das antike Judentum*, 92f., who, following Klostermann, likewise holds that many of the Biblical laws and groups of laws originated in just this way from the decisions of the judges.

[313] משפחה; cf. my "*Beena* Marriage (Matriarchat) in Ancient Israel and Its Historical Implications," *ZAW*, 6 (new series) (1929), 99–101.

young men, has arisen against the murderer. Against this the mother protests; why should she lose both her sons because of this one act?[314] The question raised is indeed novel, suggesting, as it does, a radical departure from the established practice and concept of justice and custom, and that too in the reign of an enlightened, progressive king, who did not hesitate to deviate from traditional procedure, and had already done so once in a case of blood-revenge in his dealings with Abner after the slaying of Asahel.[315] Moreover, since the entire clan, including undoubtedly those elders who would ordinarily function as the members of the town court, are relatives and potential blood-avengers, and therefore are themselves all involved in the case, the matter is referred directly to the king for adjudication. There being, of course, no precedent, the king reaches his decision entirely by the application of the principles of ordinary justice and common sense, particularly as interpreted by his own enlightened, creative and progressive mind. He decides that in this case, where one brother kills another brother, there shall be no blood-revenge;[316] and obviously anticipating that this radical departure from established custom and principle may well provoke strong opposition, he likewise intimates that if the clan is unwilling to abide by this decision he himself will see that it is enforced and that the offenders are rigidly punished.

---

[314] The question of whether this was a premeditated or unpremeditated murder does not enter into consideration. The conditions of the narrative, however, suggest that it was unpremeditated; note that the participants are two brothers and that, as the verb וינצו (cf. Ex. 21.22 and above, note 66) implies, they had been engaged in a fight, in which, in sudden anger no doubt, one slew the other, but where the relations of murderer and murdered might just as easily have been reversed. The fact therefore that the question of premeditation is not raised at all, not even by the king, suggests that this narrative pictures a stage of the evolution of the institution of blood-revenge earlier even than that pictured in Ex. 21.11–14 in its original form. This is convincing evidence that the legal distinctions and procedure set forth even in the original *mišpaṭ* form of that law are later, and probably quite a bit later, than the time of David.

[315] Cf. above, note 52.

[316] This accords fully with David's general attitude toward the institution of blood-revenge; cf. above, note 66.

This decision, once given by the king as the supreme judge, becomes, of course, the established law for every similar case in the future. All that is lacking is the formulation of this law or principle in characteristic *mišpaṭ* form. And we can easily see just what form this would have taken. It would in all certainty have constituted a subordinate condition appended to the general law of blood-revenge. This former would have begun with כי and would have provided for the slaying of the murderer by the blood-avenger or even by any member of the clan of the murdered man.[317] This subordinate condition would have begun with ואם, and would have provided that if, however, it be a case where one brother slays another brother, then blood-revenge shall not be exacted.[318] Both statements together would have constituted a typical *mišpaṭ*, comparable in every way to those which we find in Ex. 21.2–22.16.[319]

---

[317] This may be inferred from the fact that here not one single individual, the nearest living relative, seeks to claim the blood of the murderer, but the entire clan. This may be due, of course, to the peculiar features of the case here presented. More probably, however, it pictures an early stage of the evolution of the institution of blood-revenge, when the entire clan of the murdered man, which means practically every member thereof, was charged with the duty of blood-revenge. This is, speaking generally, the Bedouin custom still today (cf. Musil, *Arabia Petraea*, III, 359–369). There is every reason to believe that it obtained also in ancient Israel, and that the practice of limiting this duty only to the blood-avenger represents a definite restriction upon the original practice consonant with advancing culture.

[318] And if this had been a Deuteronomic *mišpaṭ* then, in all likelihood, this particular provision of the *mišpaṭ* would have been supplemented by the motivating statement, "in order that the mother of the two men might not be doubly bereaved through one act."

That this limitation upon the general principle of blood-revenge is not specified in Ex. 21.11–14 is probably due to two factors, first, that, as we have seen, we no longer have this *mišpaṭ* in its original form, and second, this limitation is largely covered by the provision which evolved later, which distinguished between wilful and unpremeditated murder.

[319] I Sam. 30.1–24 offers another instance of the manner in which established laws arose in ancient Israel. In fact the law itself is definitely stated in v. 24b in David's words, "He who engages in the actual battle and he who remains behind to guard the camp shall share equally in the booty." Certainly this is not a *mišpaṭ*, for neither has it the *mišpaṭ* form nor is it the result of actual litigation. Is it perhaps a *ḥoq?*

Understanding now what must have been in a general way the judicial organization and procedure in ancient Israel and the manner in which *mišpaṭim* or case-laws evolved, we can appreciate all the better the import of the differences between the *mišpaṭim* of C and those of Deuteronomy which we have determined. We have learned that there are three characteristic differences between the *mišpaṭim* in C and those in Deuteronomy. The former are characterized by extreme conciseness and directness, while the latter are marked by a considerable diffuseness and prolixity and frequent motivation; the latter impose the death penalty, usually by stoning, far more frequently than do the former; and finally, the latter make not infrequent reference to the court of village elders as well as to the judges, whereas the former never make the slightest reference to the character or composition of the court or to the manner of its functioning. This last is all the more striking, since the *mišpaṭim* in C offer a number of occasions when the slightest yielding to the tendency to prolixity might easily have called forth some mention of the court.[320]

The second characteristic difference between the two sets of *mišpaṭim* is, as has been suggested, easily explained. Certainly neither the few *mišpaṭim* in C nor those in Deuteronomy, nor even both groups together, represent the sum total of *mišpaṭim* which must have been current in ancient Israel. They represent instead a selection by the authors or editors of the two codes of a few *mišpaṭim* out of a far larger body which must have been definitely formulated in the pre-Deuteronomic period. Therefore the fact that in the *mišpaṭim* in Deuteronomy the death sentence is imposed with so much greater frequency than in the *mišpaṭim* in C is to be explained by the presumption that the principle and purpose which influenced the Deuteronomic editors in their selection of old *mišpaṭim* as well as in their framing of new *mišpaṭim* were such as necessitated the choice of quite a number of old *mišpaṭim* in which the death penalty was provided. We have already determined what this principle and purpose must have been. Apparently these conditions did not apply to the authors or editors of C.

---

[320] Cf. 21.11, 14, 22, 29; 22.1–2a, 4, 5, where court authority and supervision are clearly implied.

The two remaining basic differences between the *mišpaṭim* of C and those of Deuteronomy are, however, not so readily explicable. We have seen that some of the prolixity which characterizes the Deuteronomic *mišpaṭim* in contrast with those of C, and the accompanying tendency to state the motives which prompted the decision which the *mišpaṭ* offers, may well be regarded as the result of Deuteronomic editing. This is, of course, obviously true of those characteristic and oft-repeated Deuteronomic clauses, ובערת הרע מקרבך, לא תחוס עינך and וכל ישראל ישמעו ויראו ולא יוספו לעשת כדבר הזה. Unquestionably too not a small measure of this motivation, and perhaps also of the accompanying prolixity, is due to the fact that the adaptation of old *mišpaṭim* to an age considerably later than the time of their formulation, an age too which differed in many and very essential respects from the earlier period, naturally required a certain amount of editorial interpretation and internal modification of the *mišpaṭim*. But even though this be granted, the impression still remains that the *mišpaṭim* in Deuteronomy, even in their original, pre-Deuteronomic form, were more prolix than those of C. It is difficult, and in fact impossible, to determine in every case just what constitutes exactly the addition to or modification of the Deuteronomic editors, but undoubtedly quite a bit of the verbiage of the Deuteronomic *mišpaṭim*, presumably original and not the result of Deuteronomic editing, would have been dispensed with entirely in the *mišpaṭim* in C.

Thus, for example, it is noteworthy that three of the Deuteronomic *mišpaṭim*, viz. 21.20; 22.14b, 16–17a; 25.7b, 8b, state the actual words which the plaintiff in the case is expected to recite before the court of village elders. The case dealt with in this last *mišpaṭ* in particular is almost identical in character with that of the *mišpaṭ* in Ex. 21.10–11. In both cases the woman whose right to sexual enjoyment has been denied must make her claim and prove its truth in order to secure without payment on her part her freedom from the unwilling consort. In both cases therefore a declaration of like import would have to be made by her before the court. Deut. 25.7b states explicitly the formula which the woman is expected to recite; Ex. 21.10–11 makes not the slightest mention thereof. This difference is characteristic and seems, as has been intimated, to go back to the original pre-Deuteronomic formulation of the Deuteronomic *mišpaṭim*.[320a]

[320a] Perhaps another, equally significant though far more subtle difference between the *mišpaṭim* in C and those in Deuteronomy consists in this that, with possibly the single exception of the long and complex *mišpaṭ* in Ex. 21.2–11, all the *mišpaṭim* in C are manifestly either the product of judicial decisions by competent judicial authorities, which have become the law for all later cases of similar character, or else they give formal and official statement to a judicial procedure to be followed by the litigants in certain civil cases (cf. Ex. 22.6–9). In contrast to this the majority of the *mišpaṭim* in Deuteronomy, and particularly those which have no pre-Deuteronomic antecedents but are altogether of Deuteronomic authorship, seem to have a legislative quality of a somewhat different character. They are manifestly not the result of the decisions of recognized judicial authorities and given in specific cases, nor yet do they state in formal, legal fashion long-established customs which become the basis of legal procedure by litigants. Instead they deal in the main with what are obviously innovations, either the inauguration of new institutions, such as Deut. 17.8–13; 21.22–23; 25.1–3, or the radical reorganization of old institutions, such as Deut. 15.12–18; 19.11–13; 25.5–10.

Moreover the source of these *mišpaṭim* and of the innovations which they introduce is no longer the authority of a judge or a court, nor yet that of a long-established and generally accepted custom; instead it is the obviously assumed authority, whether real or not it is difficult to say, of a body of legislators, who manifestly hold themselves to be, in accordance with some recognized principle, supreme arbiters among the people and exponents of the will of Yahwe unto them. These are, of course, the post-exilic Deuteronomic legislators. As the self-assumed mouthpieces of Yahwe they reform old customs and institutions, not gradually through the natural processes of slow cultural development, the end and climax of which is the literary formulation of the *mišpaṭ*, as is clearly the case in Ex. 21.2–11, but they reform them momentarily and speedily, in accordance with their preconceived purpose and program, and the *mišpaṭ* formulation of their enactment represents the beginning of the new institution. Accordingly their legislation not infrequently assumes even the aspect of instructions to the judges themselves with regard to judicial procedure, as, for example, in Deut. 17.8–13; 19.11–12; 16–19; 21.22–23; 25.1–3; this is in significant contrast to the *mišpaṭim* of C, which addresses its legislation only to the litigants and never to the judges.

True, some of the *mišpaṭim* address themselves directly to the litigants, in that they prescribe specific punishments for specific offenses, as, for example, Deut. 13.2–6; 7–12; 13–19; 17.2–7; 21.18–21; 24.7; 25.11–12, just as do the majority of *mišpaṭim* in C. But, as we have seen, it is chiefly among this group that a large number of borrowed, pre-Deuteronomic *mišpaṭim* are found; and, on the other hand, those *mišpaṭim* in this group which we have

But if this be so, then only one conclusion is possible, viz. that we must assume the existence in ancient Israel not of one, but of two pre-Deuteronomic corpuses of *mišpaṭim*. And this very assumption we have already anticipated. For we have shown that the system of administration of justice and the court organization which obtained in ancient Israel during the period of the kingdom would have necessitated almost beyond question the preparation of a corpus of *mišpaṭim* for the information and guidance of the king in the discharge of his duties as supreme judge. And certainly in the period of the divided kingdom we must assume the existence, not of one single corpus for the two kingdoms, but of two such royal corpuses, one in the North and one in the South. Presumably too the *mišpaṭim* in C were drawn then from the Northern *mišpaṭ*-corpus, while the older, borrowed *mišpaṭim* in Deuteronomy were taken, at least for the most part, from the Southern corpus.[321]

Probably too this assumption of two distinct *mišpaṭ*-corpuses, constituting the sources of the *mišpaṭim* in C and those in Deuteronomy respectively, may account for the comparative frequency of reference to the court of town or village elders in the latter group and the complete absence of reference thereto in the former

---

set down as being wholly of Deuteronomic origin, such as those in Deut. 13.2–6; 7–12; 13–19; 17.2–7, make decidedly the impression of resulting, not from judicial decisions by a judge or court, but instead of resulting from legal enactments by a law-making body with a definite ritualistic theory and program.

Moreover, as we have seen (cf. above, note 241), these Deuteronomic legislators tended to expand this *mišpaṭ* style of writing to cover cases and institutions which possessed far less of a legal than of a ritual character, as, for example, in the already cited instance in Deut. 21.1–9 and 22–23, or in 20.1–9; 10–18; 19–20; 21.10–14, or even in the purely hortatory portions, in the introductory chapters, 6.20–25; 7.1f., 17ff. Obviously this use of the old *mišpaṭ* form has become a decided characteristic of Deuteronomic style, and particularly of post-exilic Deuteronomic style. It is in marked contrast to the rigid employment of the *mišpaṭ* form in C. The line of demarcation between the C and the Deuteronomic *mišpaṭim* in this important aspect is clearly visible.

[321] Perhaps a slight measure of confirmation of this may be found in the fact that the *mišpaṭ* in Deut. 24.1–4 was certainly current in the South, as the reference in Jer. 3.1 indicates. And, of course, as we have seen, the *mišpaṭ* in Deut. 15.12–18 is directly dependent upon the *mišpaṭ* in Ex. 21.2–6.

group. The Naboth-story[322] establishes quite clearly that at least up to the time of Ahab the village elders[322a] exercised judicial functions in the Northern Kingdom. But it is fair to presume that with the more advanced and rapidly developing culture of the agricultural Northern Kingdom, as contrasted with that of the more pastoral Southern Kingdom, the old institution of courts of elders, rooted as we have seen, in nomadic or semi-nomadic, desert, clan and tribal organization, would tend to give way sooner to the institution of professional judges and a more highly developed and unified court organization, and this in turn, would probably eventuate in a more systematic and efficient codification of established *mišpaṭim*, such as undoubtedly characterized the Northern *mišpaṭ*-corpus, from which the C *mišpaṭim* were taken, when contrasted with the Southern corpus, the source of most of the Deuteronomic *mišpaṭim*. And the very absence of all reference in the C *mišpaṭim* to judicial authorities, whether the elders or the professional judges, may be easily accounted for by the assumption, just suggested, of a more highly evolved and unified court system in the Northern Kingdom, under which the existence and authority of courts presided over by professional judges were recognized more generally than in the South. This condition would, of course, preclude largely the necessity of specifying the details of court procedure, such as we find so frequently in the Deuteronomic *mišpaṭim*.[323] All this is, of course, largely hypothetical; but since no other explanation of the fact in question suggests itself, and since no direct evidence is to hand, the problem of why the Deuteronomic *mišpaṭim* refer with such comparative frequency to the courts of elders while those of C are altogether silent with regard thereto, can be explained only by hypothesis; and certainly the hypothesis offered fits the case and seems quite reasonable and plausible.[323a]

---

[322] I Ki. 21.8ff.

[322a] Associated here, it is true, with the village burghers, of whom clearly Naboth himself was one, and one highly regarded.

[323] Not improbably too the comparatively frequent reference to the courts of elders in Deuteronomy may be due in part to the fact that in several of these cases (21.18–21; 22.13–21) the court imposed the death penalty by stoning upon the guilty person or persons. As we have seen, this manner of execution was thought to have an expiatory effect in behalf of the entire community, defiled by the crime committed in its midst. The court of elders trying the case seems therefore to have functioned to a certain degree as representatives of the community and to have supervised the expiation in its behalf in a manner which professional judges could scarcely have done. This suggests further that the reference of such cases to the courts of elders rather than to the professional judges by these Deuteronomic legislators was purposed, and not merely a survival of ancient custom, and was designed to heighten the

While therefore the fact can not be proved conclusively, we may none the less regard it as fairly probable that both the Northern and the Southern Kingdoms had each its own royal or state *mišpaṭ*-corpus, each of considerable extent, each representing a compilation by competent legal authorities of each kingdom of the *mišpaṭim* which had been evolved in the court practices and had been formally accepted in the legal systems of the two kingdoms. Both corpuses naturally had much in common, since, on the one hand, both were undoubtedly rooted in the judicial sys-

expiatory effect of the execution of the death penalty in case the accused person were found guilty.

[323a] Perhaps some slight additional corroboration of this conclusion may be found in a comparison of the parallel narratives of Ex. 18.13–27 and Num. 11.16–17, 24b–30. As we have shown ("The Oldest Document," 127–135), the nucleus of the narrative in Ex. 18 is from K, but the chapter in its present revised form and illogical position represents the work of Elohist editors. On the other hand, the parallel narrative in Num. 11 is from J, as the various details, particularly the tabernacle outside the camp (cf. my "The Tent of Meeting," *JAOS*, 38 [1918], 132; also "The Oldest Document," 119–127), the descent of Yahwe in the form of the cloud to the door of the tabernacle, there to confer with Moses, and the figure of Joshua as still a lad and the personal attendant of Moses, indicate. Now it can not be without significance that the J narrative, coming undoubtedly from a southern environment, represents the seventy judges whom Moses appoints under divine direction as elders, while the E narrative represents them merely as *'anše ḥayil*, men of high standing and authority in Israel. Likewise the Deuteronomic version of this narrative (Deut. 1.13–17), based primarily upon the E rather than upon the J version, speaks of these judges as "men, wise, understanding and reputable", but makes no mention whatever that they were elders. It is by no means improbable that the J version of this narrative represents these judges as elders because the local courts of elders persisted longer in the South, while the E version of the narrative ignores their role as elders and speaks merely of their intellectual, moral and judicial qualities because, coming from the North, it was better acquainted with the institution of professional judges while, at the same time, it had largely outgrown the older institution of local courts of elders.

tem and the *mišpaṭim* which had begun to evolve already in the period of the united kingdom under David and Solomon, and on the other hand, both systems sprang out of the daily life which the people of the two kingdoms lived; and in the main life in the Southern Kingdom, despite its slower cultural evolution, could have differed but little in its essential characteristics from that in its Northern neighbor. Both dealt therefore to a very considerable extent with the same legal problems and solved them in much the same way. Not impossibly even there was some, and perhaps even much, interchange of legal opinions and decisions between the two closely-related kingdoms, particularly during the period of intimate political relations in the days of Ahab and Jehosaphat and their immediate successors and again in the period following the destruction of the Northern Kingdom, when apparently the South fell heir to much of the cultural possessions of the North. Unquestionably the relations between the two corpuses, granting that such there actually were, were close and intimate.

V. THE LITERARY HISTORY OF THE *Mišpaṭim* AND THE *Mišpaṭ*-CORPUSES

We have already anticipated almost everything which may be said with regard to the literary history of the *mišpaṭ* and of the *mišpaṭ*-corpuses in ancient Israel. A few matters, however, remain to be considered, and a general summing-up of conclusions must still be made.

And first a word with regard to the relation of the *mišpaṭim* in C and in Deuteronomy to those of other ancient Oriental law codes, and particularly those of the Hammurapi, Old Assyrian and Hittite codes. This question has been discussed frequently and in great detail by many scholars, and particularly in recent years by a number of representatives of the so-called modern, archaeological school of Biblical criticism, who would, seemingly at all costs, reject the conclusions of the former so-called literary school and establish, chiefly upon the basis of archaeological testimony, interpreted largely according to individual fancy and preconceptions, the complete cultural dependence of ancient Israel, chiefly through pre-Israelite, Canaanite mediation, upon the earlier cultures of the ancient world of the Near East, particularly those of Babylonia and Assyria, the Hittite Empire and Egypt. And finding striking analogies between various laws of the Hammurapi, Old Assyrian and Hittite law codes, on the one hand, and Biblical legislation, particularly in the *mišpaṭim*, on the other hand, they have hurriedly drawn the conclusion of the general dependence of the Biblical laws upon these older codes. This they have done almost entirely without consideration of the important question of the means and agencies of transmission of these laws and the manner and principles of adaptation of them to the conditions of Palestinian life.

Their discussions have given rise in turn to quite a number of queer and altogether gratuitous hypotheses, not the least of which was that of old Hebrew, as contrasted with specifically Israelite laws; the former were laws which manifested supposedly striking affinities with laws found in the other Old Oriental codes. This affinity was accounted for by the assumption of an old Hebrew law code, where the term Hebrew is used in a wide, inclusive sense, embracing practically all the ancient northern Semites. Those laws which manifested no such affinities were conceded to be in the main of specifically Israelite origin, the product of cultural conditions and legal problems peculiarly Israelite in character.

Furthermore, in various ingenious ways the compilation of these Biblical laws, and particularly of the little law code of C, in Ex. 20.23–23.19 is associated with Moses. He is represented as having had access of some kind to the different Old Oriental law codes and making extracts from them which he adapted somehow to the conditions of life in Palestine which, with unparalleled prophetic foresight, he must have known, long in advance, Israel was destined to experience in time. These he likewise combined with various specifically Israelite laws, many of them obviously the product of the conditions of settled life in Palestine, which Israel was to enjoy only in the future. Thus through Moses the groundwork of the Biblical legislation was produced. This was amplified somewhat by the incorporation of supplementary legislation in the time of the Judges; therefore, in the by and large the body of Biblical laws comes from this very early period of Israel's cultural and political history. Presumably the subsequent periods of Israelite history, with their rapid and vast changes of fortune and culture, had little to contribute to the content of Biblical law.

The hypothesis is almost naive in its simplicity, and in a way also in its orthodoxy with regard to the law-giving role of Moses. It seems to be animated equally by four basic motives, an over-enthusiasm for the results of modern archaeology of the Near East, by an antipathy toward the methods and conclusions of the so-called literary criticism, with Wellhausen as the particular *bête noire*, by an irresistible urge to propound a new principle and method of Biblical research which might lead to novel and startling conclusions, altogether at variance with and even upsetting the conclusions of the school of literary criticism, and by a desire to win support for the new hypothesis against the old by a pseudo-orthodox attempt to show that this archaeological evidence proves that the Biblical narratives and traditions are literally true in a way.

It is, however, interesting and significant to note that in his latest book[324] Jirku, one of the leading and most original members of this new school, has modified his earlier views considerably. In it he makes a new, and apparently a somewhat more thoroughgoing investigation of the relationship existing between the Biblical laws and those of the Old Oriental codes with which they have manifest affinities, and comes to the very significant conclusion that in practically every case the Biblical laws exhibit an earlier stage of cultural evolution than do the corresponding laws of the other Oriental codes. This is perhaps the most valuable result of his investigation. The full import of this significant fact he does not develop. In this book he makes little or no modification of his earlier theory of an old Hebrew law code, the common source of the various Old Oriental law codes, including the Biblical, but neither does he press this hypothesis with his former assurance of its justification. Probably he no longer feels quite the same measure of confidence in it as he did when he first propounded it.

---

[324] *Das weltliche Recht im Alten Testament*, Gütersloh, 1927; cf. particularly pp. 142ff.

But if it be true, as it undoubtedly is, and as he shows convincingly, that the Biblical laws, almost without exception, exhibit as their background an earlier stage of cultural evolution than do the corresponding laws of the Old Oriental codes, then it follows necessarily, as he himself intimates, that the Biblical laws can have no direct dependence of any kind upon these various Old Oriental codes. The only possible direct relationship would then be through this supposititious Old Hebrew code, his presumptive common source of all these codes. But, on the one hand, it must be admitted that there is no valid evidence whatever for the existence of such an Old Hebrew code; and, on the other hand, if for the sake of argument it be granted that such a code did actually exist, it would imply that its cultural background too must have been comparatively primitive, at least as much as, if not more so than that of even the Biblical laws, and likewise that this Old Hebrew code must have continued in existence, presumably in literary form, and to have been recognized in certain circles as constantly authoritative at least from the time of Hammurapi to that of Moses. But if such were the case, then how does it happen that we possess not the slightest evidence of its existence other than the mere unproved assumption of a few scholars evidently striving to propound a theory novel and bizarre?[325]

Even more significant and decisive is the fact, of which not one of these scholars seems to take cognizance, viz. that, as we have pointed out, the affinities of the Biblical laws, and particularly of the *mišpaṭim* and the institutions associated with them, with institutions and legal principles of Bedouin and fellaheen, nomadic and semi-nomadic, and even agricultural life of today, and certainly therefore of ancient times also, are quite as decided as, or perhaps even more so than are their affinities with the laws and institutions of the Old Oriental codes. Undoubtedly there is cultural relationship of some positive nature between these Bedouin institutions and legal principles and those of the Bible; and not that alone, but also equally between these Bedouin institutions and legal principles and those of similar nature in the Old Oriental codes. Nor may we assume that these Bedouin institutions and legal principles developed either directly through conscious borrowing, or indirectly through unconscious cultural influence, from either the Biblical laws and institutions or from those of the Old Oriental codes. Rather the course of cultural evolution would lead in quite the opposite direction, from the primitive Semitic nomadic or semi-nomadic life, as exhibited still in Bedouin customs and institutions today, to the cultural stages pictured in the Biblical legislation and in that of the Old Oriental codes.

---

[325] Ring (*Israels Rechtsleben*) has demonstrated very convincingly by a thoroughgoing comparison of the Biblical laws with the parallel laws in both the Old Assyrian and Hittite codes that there is little or no ground for assuming the direct dependence of the former upon either of the latter, and that such parallelism between them as does exist must be explained upon the basis of evolution from a common cultural environment and through a parallel cultural development.

And this points to the natural and logical conclusion that the unquestionable affinities existing between the laws of these various codes, and not only between those of the Bible on the one hand and those of the Old Oriental codes on the other, but also and equally significantly, between those of the various Old Oriental codes themselves, are to be explained, not by the unevidenced assumption of a still older and more primitive Hebrew law code, the common source of all these codes, but by the simple fact of the cultural evolution of the various Semitic peoples, and perhaps of the Hittites also, from simple, primitive, nomadic or semi-nomadic origins to the various stages which not only the several law codes but also the monuments and historical records of these different peoples show that they attained. This does not, of course, preclude the possibility of a certain exchange of cultural influences and possessions between these various peoples. The evidence thereof is ample, and the fact that Assyrian-Babylonian culture influenced greatly and directly the culture of Israel, particularly during the 8th and 7th centuries B. C., is of course recognized by all. But all this is beside the mark entirely.

The fact which Jirku has established, that the laws of the Bible manifest an earlier cultural stage than do those of the Old Oriental law codes is conclusive proof that just here there was little or no direct borrowing either in one direction or the other, but that these very laws of the Bible prove that Israel experienced a spontaneous, internal evolution of its law and of its legal principles and institutions, which sprang out of and went hand in hand with its entire cultural, political and social evolution. In short, we must of necessity regard all the Biblical laws and the entire Israelite system of administration of justice as the product of the natural, spontaneous, Israelite cultural evolution, rooted, just as was its entire cultural life, in old, desert, nomadic or semi-nomadic existence, and changing, growing, expanding, progressing through the successive stages of its cultural history, as it advanced to an agricultural, and eventually to a commercial and military existence, with the corresponding changes in its social organization and its outlook upon life and life's complex relations.

And what affinities do exist between the Biblical law and the laws of the various Old Oriental codes must be explained therefore primarily upon the unquestionably correct assumption of both a common cultural origin and evolution, as well as of a common racial origin for the various Semitic peoples at least. And this must be coupled with the facts that everywhere in human relations the basic principles of right and justice are much the same, even though customs may differ materially, and that particularly when peoples live under much the same economic conditions, as did the ancient Oriental peoples, Assyrians, Babylonians, Hittites and Israelites, the same legal problems are bound to present themselves to all these peoples and are equally bound to find practically identical solutions among them. We may accordingly dismiss without further consideration the assumption of an Old Hebrew law code, the common source of the various Old Oriental codes and particularly of the Biblical laws, chiefly the *mišpaṭim*, which have affinities with various laws of these codes. Instead we may conclude with absolute certainty that the legal system of ancient Israel, both as to legal principles and the laws themselves as well as to the institutions by which the laws were enforced, were the result of a natural, spontaneous, internal development within the cultural life of Israel from their actual origins in primitive, Semitic, nomadic or semi-nomadic life, such as the Israelite clans or tribes lived before their entrance into Palestine.

This in turn carries with it the conclusion that the *mišpaṭim*, whatever may have been their ultimate cultural origins in conditions of common, primitive Semitic life, evolved naturally and spontaneously in Israel during the period of its sojourn in Palestine. Israel brought no formal *mišpaṭim* with it into the land, nor can they be associated in any way with the figure of Moses. At the most it brought with it into Palestine only customs and a point of view and a primitive social and judicial organization, which recognized the authority of the clan and tribal elders and of occasional judges perhaps, all of which sprang out of its pre-Canaanite, desert, nomadic or semi-nomadic existence. These it adapted gradually to the conditions of settled and predominantly agricultural life in Palestine and fused with many customs and institutions of this settled life which it absorbed from the new environment. Gradually new customs and institutions evolved, largely the outgrowth of this cultural syncretism, the kingship, the beginnings of commercial life, the drift of population towards the cities, the development of new legal forms and institutions to conform to the changing life and the evolving, progressive cultural point of view, the expanding authority of professional judges with consequent diminution of the authority of the courts of elders, and a steady development of an organized legal code. In this way undoubtedly the *mišpaṭim* evolved in Israel.

And unquestionably, too, with the gradual increase in number and range of these *mišpaṭim* and with the development of the legal functions of both king and courts, and especially those presided over by the professional judges, and perhaps also with the necessity of distinguishing by the highest legal authorities in the land, the king no doubt and the most respected and responsible judges, between those *mišpaṭim* which were regarded as responsible legal decisions, in other words as established law, and those decisions by minor legal authorities which were disapproved or reversed by the higher authorities, it followed necessarily that in time these various *mišpaṭim* would be organized and systematized and codified in the form of a *mišpaṭ*-corpus. Such an ultimate development was inevitable in a people which in time reached the stage of cultural evolution which Israel finally attained.

Nor was the task apparently particularly difficult. It might easily have been a spontaneous development in Israel. But if precedents and guides were needed to at least furnish the suggestion, if not likewise to establish the method, there were plenty such in the Old Oriental codes, the existence of which had undoubtedly become known in Israel because of its varied contacts with the different Oriental nations. Manifestly the surprising thing, as we have already said, is not at all that Israel should have evolved as a spontaneous product of its internal cultural evolution a well-organized *mišpaṭ*-corpus, or even more than one such; the surprising and inexplicable thing would have been had it not done so. In the light therefore of what we know of the cultural evolution of Israel from the moment of its settlement in Palestine down to the Deuteronomic period, there is every reason for, and not the slightest reason against the assumption that in the course of this long period a *mišpaṭ*-corpus of considerable extent and systematically organized according to subject matter for convenient reference, or even two such corpuses, one in the Northern Kingdom and one in the Southern Kingdom, should have come into being. We may regard this assumption as fairly well established.

This conclusion is confirmed by the results of our analysis of the Biblical *mišpaṭim* in C and Deuteronomy which have brought to light, in addition to quite a number of sporadic *mišpaṭim*, three well-organized groups or sections of *mišpaṭim*, which must have been lifted bodily by the C and Deuteronomic editors from their original places in the antecedent *mišpaṭ*-corpus or corpuses, one section, which constitutes the nucleus of the *mišpaṭim* in Ex. 21.2–27 and which deals with the general theme of how a Hebrew slave acquires his or her freedom, another section, the nucleus of the *mišpaṭim* in Ex. 21.28–22.14, which deals with various legal problems incidental to the keeping of domestic cattle, and a third section, in Deut. 22.13–29 plus Ex. 22.15–16, which provides the penalties or procedures in regard to forbidden sexual relations incidental to marriage. The wide range of these three groups of *mišpaṭim* and their systematic organization are proof positive that at one time or another they were parts of a much larger corpus of *mišpaṭim*, the whole of which must have been characterized by similar systematic organization of related laws into specific paragraphs each dealing in logically progressive manner with one main theme. This systematic corpus of *mišpaṭim* could have been neither C itself, nor yet Deuteronomy, for in both these writings there is considerable disorganization of the original unity of these *mišpaṭ*-themes by the introduction of various loosely related material. Nor does either collection of *mišpaṭim* in C or in Deuteronomy give the impression of completeness, such as, for example the Hammurapi Code does, and as undoubtedly the source or sources of the Biblical *mišpaṭim*, as the very systematic arrangement of these three sections actually implies, must likewise have done.

The only conclusion possible therefore is that these various Biblical *mišpaṭim*, and in particular these three well organized paragraphs, were extracted by the C and Deuteronomic editors from some older, well-organized and fairly extensive *mišpaṭ*-corpus. And inasmuch as we have seen that the section of marriage-*mišpaṭim*, the greater part of which is found in Deuteronomy, and only a small section of which occurs in Ex. 22.15–36, clearly displaced from its original connection, is characterized by certain significant differences from the *mišpaṭim* in C, such as the reference to the court of village or town elders, the greater diffuseness of style and the motivation of the provisions of the individual *mišpaṭim*, and inasmuch too as we have seen that the assumption of two separate royal *mišpaṭ*-corpuses, one from the Northern Kingdom and one from the Southern Kingdom, is both probable and reasonable, we may conclude again that there were these two *mišpaṭ*-corpuses in ancient Israel, and furthermore, that in general the *mišpaṭim* in C were taken from the Northern *mišpaṭ*-corpus and those in Deuteronomy from the Southern.

The next question to be considered is that of the approximate date of these *mišpaṭim*.[326] One thing is certain, viz. that the cultural background is that of settled life in Palestine. Even in the *mišpaṭim* in C the agricultural life is the norm, and the keeping of domestic cattle in the midst of an agricultural environment gives rise to various legal problems of more or less complexity. A definite money system has become well established as the medium of commercial transactions.[327] Social class distinctions have evolved and there is now a specific group of Hebrew slaves who have presumably been forced into this rather unhappy social condition by the exigencies of economic life. Above all else the authority of a well-organized central government with a developed judicial system is basic to these laws. Seemingly the most primitive practice of the old institution of blood-revenge, which apparently obtained with comparatively little modification up to the time of David, has been curbed considerably, and a distinction is now drawn, under the jurisdiction of responsible authorities, between premeditated and unpremeditated murder; and these authorities have even the power, and still more the duty, to have the wilful murderer taken from the sanctuary where he may have sought asylum and deliver him over to the blood-avenger for execution. And these same judicial authorities determine in specific cases whether there are adequate grounds for blood-revenge or not; apparently too their decision is final, and, in case the family of the slain person should persist in exacting blood-revenge in disregard of their decision, it would be enforced by the power of the state. Furthermore many of the *mišpaṭim* in C, and particularly those complex *mišpaṭim* which contain a number of subordinate conditions, such as, for example, that in Ex. 22.2–6, are manifestly not the result of a single judicial decision. They represent rather a growth, a formulation first of the basic principle of the *mišpaṭ* and then the gradual development of a variety of specific cases which necessitate exceptions to or qualifications of the application of the basic principle. Such a growth naturally requires a considerable period of time to evolve completely.

---

[326] Jirku (*Das weltliche Recht im Alten Testament*, 53, 148f.) infers from the fact that none of the *mišpaṭim* makes the slightest reference to the king and his functions that they must all come from the period preceding Saul and David, and are therefore presumably the remains of an originally more extensive Mosaic law code.

From all this evidence, which could be expanded considerably were it necessary, it is clear that these *mišpaṭim* could have evolved, only after the settlement in Palestine, and this not all too soon thereafter. The centralization of authority, the clearly recognized power and dominion of the state, the development of social class distinctions, the evolution of a definite money-system and the like, all point to a period after the establishment of the kingdom by David. We have had evidence of how at least one *mišpaṭ* institution, limiting the application of the old and general principle of blood-revenge, began with David himself; and it is safe to presume that in his capacity as supreme judge of the entire kingdom, an authority which he exercised over a very long period with firmness and responsibility and in a spirit of open-mindedness, progress and social and economic reform,[328] he initiated many additional *mišpaṭim*. It would therefore not be at all amiss to presume that the process of formulation of *mišpaṭim* in a large and systematic way, and perhaps also the practice of recording these *mišpaṭim* as they became official, and therefore the beginnings of the evolution of the ultimate *mišpaṭ*-corpus or corpuses had their definite beginnings with David and the systematic inauguration of the kingship.[329]

---

[327] Cf. Menes, *Die vorexilischen Gesetze Israels* (Beiheft z. *ZAW*, 50), 25.

---

[328] Nathan, precisely like the wise woman of Tekoa in II. Sam. 14, goes to David in the latter's capacity of supreme judge and lays before him the fictitious case of the poor man whose only lamb had been stolen. David gives his decision promptly and with assurance, quite as if based upon established precedent well-known to him. The decision that the oppressive rich man must recompense the poor man fourfold for the theft of his lamb agrees exactly with the *mišpaṭ* in Ex. 21.37. The fact that a case such as is described in the *mišpaṭ* in Ex. 21.37 and in the narrative in II Sam. 12.1–6 must undoubtedly have arisen frequently in a people still given to a considerable extent to sheep-raising and whose semi-nomadic, pastoral days were not so remote, makes it very probable that there was some established custom, formulated in a legal decision of the *mišpaṭ* type, which regulated these cases. There is every reason for assuming, on the one hand, that this custom or legal decision was just that recorded in Ex. 21.37 and that, on the other hand, David, whose boyhood had been passed in an almost completely pastoral environment, was thoroughly familiar with it. These considerations point to the probable correctness of the Massoretic text of II Sam. 12.6, at least so far as its agreement with the *mišpaṭ* in Ex. 21.37 is concerned (however, cf. above, note 109).

In this connection it is of more than passing significance to note that still today in Palestine if a theft is committed outside of a house (a theft committed within the house is a graver offense) and the thief is caught with the stolen goods on his person, he must pay four times their value in punishment (Haddad, "Methods of Education and Correction among the Fellāhîn," *JPOS*, III [1923] 41f.). This instance shows how deeply-rooted and basic in the life of the inhabitants of Palestine, present as well as past, is the principle of fourfold repayment for theft, the evidence of which is beyond question.

But it was only the beginnings. Much of the background of the *mišpaṭim*, such as the institution of Hebrew slaves upon a scale so large that specific legislation was needed to regulate the conditions which it called forth, is certainly later than the time of David. And likewise the realization that the more complex *mišpaṭim* are the product of a gradual growth proves conclusively that the Biblical *mišpaṭim*, and especially those in C, are the result of an evolutionary process which merely began, in all likelihood, with David, and which continued steadily and uninterruptedly throughout the period of the united and into that of the divided kingdom. In fact the evidence of the Deuteronomic *mišpaṭim* and also of the still later ritualistic *mišpaṭim* in P with their characteristic forms,[330] establishes beyond all question the fact that this process of evolving *mišpaṭim* continued in Israel down into the post-exilic period at least. For these reasons therefore we can probably fix with certainty only a *terminus a quo* for the Biblical *mišpaṭim* in general, viz. from the time of David on. The *terminus ad quem* must be determined for each group of *mišpaṭim* by itself. And here, of course, the date of the literary formulation of the *mišpaṭim* in question will furnish the ultimate *terminus ad quem*. For it is self-evident that the formulation of each separate *mišpaṭ* is something quite apart from its incorporation into a definite place in a well organized *mišpaṭ*-corpus; and this last process in turn is also something apart from and antecedent to the extraction from this *mišpaṭ*-corpus by a body of later editors of a number of unrelated *mišpaṭim* or even of whole paragraphs or sections of *mišpaṭim* for insertion into other writings. Both these latter processes we find evidenced, of course, in the group of *mišpaṭim* in C. We must accordingly distinguish between three separate literary processes, the formulation of the individual *mišpaṭim*, their organization into a definite *mišpaṭ*-corpus, and finally the extraction from this corpus of various individual

---

[329] Cf. the office of the *sofer*, evidently one of the highest and most important functionaries of David's court; II Sam. 8.17; 20.25.

[330] Cf. above, pp. 123–125.

mišpaṭim or of sections of related *mišpaṭim* and their incorporation into C.

We have already concluded that no fixed date can be assigned for the first of these processes, that we have a period of steady formulation of *mišpaṭim* and of their expansion by the incorporation into them, in the form of subordinate conditions, of exceptional or particular cases of application of the underlying principle of the *mišpaṭ* proper. This period began approximately with David and continued at least until the time of the formulation of the Northern *mišpaṭ*-corpus, or perhaps, since we may well believe that even this *mišpaṭ*-corpus as originally formulated was a living and elastic thing and therefore subject to later emendation and expansion, even down to the destruction of the Northern Kingdom. The basic question is therefore when was this Northern *mišpaṭ*-corpus compiled. It is impossible to determine this with certainty because direct evidence is entirely lacking. Indirect evidence, however, enables us to fix a date with reasonable probability. On the one hand, we may not set the date too early, for time must be allowed after the reigns of David and Solomon for the formulation of *mišpaṭim* to have proceeded to such a degree that their systematic organization in a *mišpaṭ*-corpus, for the guidance of the king and the professional judges, became a matter of advisability, if not of absolute necessity. On the other hand, the date may not be set too late, for opportunity must be allowed for the extraction of certain of these *mišpaṭim* from their original place in the Northern corpus and their insertion into C. Perhaps it will be best to consider this last question first, since it will furnish the *terminus ad quem* for the composition of the Northern *mišpaṭ*-corpus.

The answer to this question is not difficult. As has been said, the cultural background of all these *mišpaṭim* is that of Palestine and of the settled, agricultural life there. Moreover, as we have seen,[331] these *mišpaṭim* are not original in C, but represent a secondary, editorial insertion into the midst of the *debarim* which constituted the nucleus of this old document. We have seen also that in all likelihood C was originally a separate, independent document or writing, which paralleled and to a not inconsiderable extent was dependent upon the older Kenite Code. Furthermore, as we have seen,[332] we have at present only a fragment of the original Book of the Covenant, though evidently its nucleus and most important section; and we have this no longer as an independent writing, but incorporated into E by secondary Elohist editors. And likewise, as we have seen also,[333] these Elohist editors represent the laws of C, the *d^ebarim* and *mišpaṭim* together, as the result of a second divine revelation to Moses, directly supplementing the Decalogue in Ex. 20.2–17. And, as we have seen further, the Deuteronomic editors interpreted the laws of the C code in this position with relation to the Decalogue as intended by Yahwe for Israel's observance only after it had entered Canaan. To a certain, though comparatively limited, extent the *d^ebarim* give the impression of a Palestinian background, especially in their provisions for the manner of observing the agricultural festivals and kindred matters. But it is the *mišpaṭim* in particular which lend a decidedly Palestinian coloring to the legislation of C. From this it follows with certainty that the incorporation of these *mišpaṭim* into C preceded the composition of D.[334] And if we may assume, as seems quite likely, although it is by no means absolutely certain, that these Deuteronomic writers or editors did not themselves originate this interpretation of the laws of C, but borrowed it rather from their Elohist predecessors, upon whom they were dependent in many ways, then we may assume also with a fair measure of probability that it was these secondary Elohist writers or editors, those who incorporated C into E and represented the laws of C as not only supplementing the Decalogue but also as intended by Yahwe for Israelite observance only after the settlement in Canaan, who likewise at the same time incorporated these *mišpaṭim* into C and thereby gave definite color to their proposed hypothesis that these laws of C were intended only for Palestinian observance.

---

[331] Cf. Part I of this monograph, *HUCA*, V (1928), 3f.

Just why they selected the two particular paragraphs which they did, those dealing with the conditions under which a Hebrew slave acquired freedom and with the conditions pertaining to the keeping of domestic cattle, it is impossible to even guess. And perhaps the very inadequacy of their procedure is best evidenced by the extensive supplementation of these two *mišpaṭ* paragraphs by the insertion into C, by editors living somewhat later, of quite a number of other *mišpaṭim*, as we have seen somewhat closely related and no doubt drawn also from the same Northern *mišpaṭ*-corpus. The date of this literary process is, of course, whatever date is assigned to the secondary Elohist writers or editors. Certainly it is not long before the overthrow of the Northern Kingdom or else not long thereafter. Probably a date somewhere in the latter half of the 8th century B. C. would be fairly accurate.

---

[332] Cf. *op. cit.*

[333] Above, pp. 24f.

[334] This is also manifest, as has been said already, from the dependence of the *mišpaṭ* in Deut. 15.12–18 upon the *mišpaṭ* in Ex. 21.2–6.

But if this date represents then the *terminus ad quem* for the compilation of the Northern *mišpaṭ*-corpus, while the reign of David represents in turn the *terminus a quo*, the actual date of this compilation must be set at some fitting occasion between these two moments. It must be, on the one hand, sufficiently later than the time of David to allow for the development of *mišpaṭim* to have reached that stage of magnitude and complexity where such compilation was at least advisable if not absolutely necessary. And on the other hand, it may be set at a date sufficiently antedating the overthrow of the Northern Kingdom to allow ample time for this corpus to have acquired such general recognition and authority that it would come to constitute a natural and proper source from which these Elohist editors might extract such *mišpaṭim* as they needed for their purpose. And finally such a task as the compilation of a systematically organized corpus of case laws presumes a period of comparative peace and quiet and cultural progress within the nation, for under only such conditions can a work of such significance and complexity be conceived and carried to successful fulfillment. One period in particular fulfills all these conditions completely. It is the reigns of Ahab and his immediate successors, the very period which, as we have seen, witnessed in all likelihood the composition of the *d*ͤ*barim* nucleus of the C code itself.[335] It seems altogether reasonable therefore to assign the compilation of the *mišpaṭ*-corpus of the Northern Kingdom to the period from about 865 B. C. to 842 B. C. And since merely to conceive of such an undertaking, and still more to then bring it to realization, is obviously a work of genius on the part of a great, progressive administrator, it seems best to regard this work as the achievement of Ahab himself, that very great king of Israel, rather than of his successors. In this case this work must naturally be assigned to the latter years of Ahab's reign, i. e. from about 865 B. C. to 854 B. C.

---

[335] Cf. my "The Oldest Document of the Hexateuch," *HUCA*, IV (1927), 115.

And, correspondingly, the compilation of the *mišpaṭ*-corpus of the Southern Kingdom, assuming that there was such, from which the Deuteronomic writers drew most, if not all of their older *mišpaṭim* in the early post-exilic period, as we have learned, probably followed upon that of the compilation of the Northern corpus. Certainly it would seem to have preceded the time of Jeremiah, as the prophet's reference in 3.1 to the content of the *mišpaṭ*, now found in Deut. 24.1–4, would indicate. Its characteristic greater diffuseness may well point to a period quite a bit later than that of the compilation of the Northern corpus, and that by writers of less literary and legal maturity and ability, and probably also under the direction of an authority, presumably the king, whose genius for organization and administration was considerably less than that of Ahab. The reigns of Joash, Amaziah and Uzziah might well comply with these conditions. It seems best therefore to assign the compilation of the Southern *mišpaṭ*-corpus to this general period, or, if we would limit it a bit more narrowly, probably to the first half of the 8th century B. C.

VI. Summary

The application of the fruits of this investigation to our basic problem of the literary history of the Book of the Covenant is summed up easily and quickly. We have seen in our previous studies that the nucleus of the Book of the Covenant consisted, in all likelihood, of a small body of ten *dᵉbarim*, laws of ritual character, represented as embodying the fundamental principles of true Yahwe-worship in the Northern Kingdom, as formulated by Elisha and his followers in 842 B. C. This nucleus was set in a narrative introduction and conclusion, seemingly of some extent, only a small fragment of which, however, dealing with the solemnization of the covenant upon the basis of the *debarim* and with the ark, has been preserved.

Into this original Book of the Covenant a small group of *mišpaṭim*, taken from the Northern *mišpaṭ*-corpus, was inserted, probably at some time during the latter half of the 8th century B. C., by secondary Elohist writers or editors. Thereby they strengthened the Palestinian coloring of the legislative portion of C and thus provided a foundation for the impression which they sought to convey by incorporating C into E, that the laws of C were supplementary to the Decalogue and intended by Yahwe for Israel's observance only after they had settled permanently in Palestine. They inserted these *mišpaṭim* midway in the original *debarim* group of laws and thus split these up into two sections of somewhat unequal extent. So far as can be determined from the material at hand, these E writers or editors contented themselves with extracting only two paragraphs or sections from the Northern *mišpaṭ*-corpus and incorporating them into C. Later editors, however, living probably not long thereafter, amplified these two *mišpaṭ* paragraphs considerably by inserting additional separate *mišpaṭim* here and there wherever it seemed most fitting, but in general before the particular *mišpaṭim* of the original *mišpaṭ* paragraphs, resemblance or relationship to which apparently suggested the insertion of these secondary *mišpaṭim*. In this way the present *mišpaṭ* section of C, Ex. 21.2–22.16,[336] found its present place and content. To these same Elohist editors of C we must, of course, assign the introductory verse, Ex. 21.1, and also the insertion of the reference to the *mišpaṭim* in Ex. 24.3, and perhaps with it the entire verse, the secondary character of which we have already determined.[337]

---

[336] Ex. 22.15–16 was, as we have shown, probably transposed to this place from its original position after Deut. 22.29, and is therefore not an integral part of the *mišpaṭim* of C. Like the other *mišpaṭim* of Deuteronomy and in particular the section of marriage *mišpaṭim* in Deut. 22.13–29, it was probably originally a part of the Southern, rather than of the Northern *mišpaṭ*-corpus. Its presence here at the very end of the *mišpaṭim* of C tends not only to confirm the conclusion of its transposition to here from its original place after Deut. 22.29, but also to indicate that all the laws in C intervening between Ex. 22.16 and 23.10, the first of the second section of the *debarim*, were inserted into C even later than was this *mišpaṭ* in 22.15–16. And since this latter was unquestionably the work of Deuteronomic editors, it follows that the laws in Ex. 22.17–23.9 were likewise inserted either by Deuteronomic or still later editors.

Such is the literary history of the Book of the Covenant up to this point, as we have reconstructed it. We must, however, carry our study still further, and consider the history of the remaining laws in C, those in Ex. 21.12–17 and 22.17–23.9. This we shall do in subsequent sections of this monograph; and in the next section we shall consider in particular the small but extremely interesting and important group of laws in 21.12–17 and the obviously related laws in 22.17–19.

---

[337] Cf. Part I of this monograph, *HUCA*, V (1928), 5–7.

THE LXX RENDERINGS OF OLD TESTAMENT TERMS FOR LAW

By SHELDON H. BLANK, The Hebrew Union College, Cincinnati, Ohio

THE LXX renderings of the Hebrew terms for divine law evidence a marked consistency. The several Hebrew synonyms are carefully distinguished in translation. The degree of consistency is greater even than a consultation of the Hebrew-Greek concordance would lead one to think. Four general observations will make this point clear: (1) The concordance mechanically records the Greek term which corresponds to the Hebrew term making no allowance for the fact that the *order* of the terms in their frequent combinations is often different in the Hebrew and in the translation. When this fact is recognized many apparently unusual renderings prove not to be such. (2) The concordance necessarily groups under the Hebrew word references to all of the renderings of the word without distinguishing among its several meanings. The translation was of course not slavish to the extent that no distinction was made among the obviously *different meanings* which attached to the one Hebrew word and it is only where the terms under consideration were employed in the Hebrew to designate a divine law, i. e. in that one meaning alone, that we find and may expect to find consistency. (3) The generally accepted theory that *different translators* were occupied with the translation of different parts of the Biblical books both helps to explain many of the remaining inconsistencies and is itself supported by them. (4) The concordance correctly records every rendering whether found in one LXX MS. or in all and these must all be considered. In fact the tendency towards uniformity is such that an unusual rendering even in a single MS. is presumably more reliable than a usual one. It must however be observed that a large proportion of the unusual renderings mentioned in the ensuing pages are found *in only one MS.* or another whereas the remaining MSS. contain the usual renderings;

in some of these cases at least the MSS. with the usual rendering doubtless retain the original reading. When allowance is made for these four sources of variation the consistency of the LXX in rendering the terms under consideration appears much greater than at first sight. The degree of uniformity is in fact so great that inconsistencies invite speculation as to why the norm is not followed The correspondence is less marked with respect to number (singular and plural) although here also an explanation is frequently at hand.

In the following pages the LXX equivalents for the Hebrew terms מצוה, תורה, חק־חקה, משפט and עדות (עדה) are considered. The degree of consistency in the LXX renderings is in each case tested and possible explanations offered for the inconsistencies, where such suggest themselves.

Inasmuch as we have here frequently to deal with the possibility that the original Hebrew text differed from the MT such a study contributes something to the verbal criticism of the MT and is likewise a necessary preliminary to any study of the Hebrew terms themselves in Old Testament usage.

I

The Renderings of מצוה

The term מצוה is very consistently rendered in the LXX. It is usually rendered by ἐντολή. Also in Isa. 29.13, where מצוה does not however mean a divine law, and in LXX B[1] to Job 23.12 (A has ἐντολή) it is rendered by the related ἔνταλμα perhaps[2] an indication of a different translator or copyist for the sections containing this rendering.

---

[1] The text of Swete's *Old Testament in Greek* (4th ed.) has been made the basis for this study and the signs employed are taken from the critical apparatus of that edition.

[2] Baumgärtel, *Beiträge zur Entstehungsgeschichte der Septuaginta*, Berlin, 1923, p. 28, points out the different renderings of מצוה in Isa. 29.13 (ἔνταλμα) and 48.18 (ἐντολή) in support of the hypothesis that two hands were at work in the translation of Isa. (α 1–39, β 40–66).

NO RENDERING

There is nothing in the Greek to correspond to מצוה in the following seven cases: Lev. 26.14 b, Deut. 11.1[3] (according to B—it is contained in A and F, and Sam., but stands between חקותיו and משפטיו. Is this a sign that it was not contained in the text from which the LXX translation was made and was added later, to MT, Sam. and the precursor of A and F?), Dt. 26.17 (Is מצות a gloss not contained in the text which lay before the LXX translators?), Dt. 30.16aβ[4] (according to B—it is contained in A and F, and Sam., but in F and Sam. it occurs between חקותיו and משפטיו; gloss?), Dt. 31.5 (המצוה is not essential to the Hebrew), 1 Kings 18.18 (the Hebrew text would be improved by the omission of מצות) and Jer. 32.11 (the Hebrew text would be improved by the omission of המצוה והחקים). It appears probable that the Greek has preserved a more original text in the most of these passages and it also appears that the term מצוה was being added as a gloss to the Hebrew text even after the production of the Ms. from which the LXX translation was made. An additional instance is mentioned below under חק־חקה (1 K. 11.34; gloss: אשר שמר מצותי וחקותי). מצוה occurs with the order of the terms different in the LXX to 1 Kings 2.3, 3.14 and 11.38.

EXCEPTIONAL RENDERINGS

There are several definite exceptions to the equivalence מצוה = ἐντολή. In Dt. 28.9 φωνή corresponds to מצוה and in verse 13 B also has φωνή, though A and F have ἐντολή. Four of the passages just mentioned where מצוה appeared to be a very late gloss were from the book of Deuteronomy. It is possible that these two passages from the same book are further indications of a tendency to add the term מצוה to the book.

---

[3] Instead of המצות האלה in 14b חקותי is inserted from 15a:
MT— . . . ולא תעשו את כל המצות האלה: ואם בחקותי תמאסו . . .
LXX— . . . ולא תעשו את כל חקותי: ואם תמאסו בהם . . .
Frankel, *Über den Einfluss der palästinensischen Exegese auf die alexandrinische Hermeneutik*, Leipzig, 1851, p. 124, calls this merely a free rendering.

[4] מצות occurs in the beginning of verse 16 in all of the Greek versions but is not found there in the MT.

In Jud. 2.17, according to B, λόγος stands for מצוה, A has the customary ἐντολή. Has מצות been substituted in the MT for an original דברי?

In Psalm 119.151 ὁδός stands for מצוה. In Isa. 36.21 (πρόσταξις), Prov. 3.1 (ῥῆμα), 6.20 (νόμος, i. e. תורה), Esther 3.3 (λεγόμενος—not a literal translation), and 2 Chron. 30.6 and 12 (πρόσταγμα) מצוה does not designate a divine law.

πρόσταγμα

The chief exceptions are six in which πρόσταγμα, the customary equivalent of חק corresponds to מצוה when מצוה does designate a divine law. These are Ex. 20.6, Lev. 4.2, Dt. 5.10, Dan. 9.4, 2 Chron. 29.25, and 31.21.

What have these passages in common that in all of them מצוה should have been rendered by πρόσταγμα? They are too widely separated for us to suppose them the work of one translator and to regard this as a peculiarity of his style. The two occurrences in Chron. might be explained by such a supposition. In 2 Chron. 29.25 the translator chose to render ביד by ἐντολή which may have encouraged his choice of a different rendering for מצוה. But the translator of this section seems in general, to have preferred the rendering πρόσταγμα for מצוה.[5] However, this was hardly the same hand as was at work on Ex. 20.6, Lev. 4.2, Deut. 5.10 and Dan. 9.4, the remaining passages. The reason for the exceptional rendering in these passages is not apparent. It is probably not a mere coincidence, however, that in three of the four the unusual rendering occurs in the translation of the phrase שומרי מצות (Ex. 20.6 and Deut. 5.10, the Decalogue, and Dan. 9.4).[6]

PLURAL FOR SINGULAR

An outstanding peculiarity in the LXX rendering of the term מצוה is that where possible the LXX avoids the singular ἐντολή.

---

[5] So in 30.6, 12 and 31.21.—Thackeray separates the concluding chapters of the LXX to Chron. from the rest of the book; cf. Thackeray, *Grammar of the Old Testament in Greek*, Cambridge, 1909, p. 13.

[6] The phrase שומרי מצות occurs twice besides (Dt. 7.9 and Neh. 1.5) and is rendered in the LXX in the normal fashion, which complicates the problem.

The plural is exactly rendered by a plural.[7] But the Greek plural corresponds to a singular in the MT in thirty out of sixty occurrences.[8] The proportion is too large to justify us in attributing the discrepancy to chance. It can not be explained by supposing that the consonants מצות were read מִצוֹת by the LXX translators and מִצְוַת by the Masorites[9] nor by supposing that the word was written in an abbreviated form and construed by the LXX translators as a plural and by the Masorites as a singular.[10]

How then account for the discrepancy? Was there a systematic pluralization of the Hebrew singular at the hands of the Greek translators? Or were original Hebrew plurals subsequently systematically changed to singulars and so recorded in the MT? A possible motive for either procedure does not readily present itself. Probably the explanation is a simple one, namely that the Greek translators in many instances correctly recognized in מצוה a collective noun and translated it according to the sense as a plural. The term has or can have this collective meaning in all but two[11] of the cases where the LXX renders מצוה as a plural.[12] On the other hand several of the cases[13] where the LXX and the

---

[7] With only three exceptions out of one hundred and twenty occurrences: Dt. 26.13b, Prov. 2.1, and, in some MSS., Psalm 119.98.

[8] In the following instances the singular is represented in the Greek by a plural: Ex. 24.12, Nu. 15.31, Dt. 5.28, 6.1, 25; 7.11, 8.1, 11.8, 22; 15.5, 17.20, 19.9, 26.13a, 27.1, Josh. 22.5a, 2 K. 17.37, Isa. 29.13, 36.21, Prov. 6.20, Job. 23.12, Esth. 3.3, Ezr. 10.3, Neh. 12.45, 2 Ch. 8.13, 14(B), 15; 14.3, 30.12 (B), 31.21, 35.15. Otherwise by a singular.

[9] That would account for Nu. 15.31 (plural supported by Sam. and Syr.), Dt. 26.13a (plural supported by Sam. and Syr.), Prov. 6.20, Job 23.12, Esth. 3.3, Ezr. 10.3, Neh. 12.45, 2 Chr. 8.13, 14, 15 (plural supported by Vulg.), 30.12, and 35.15, but not for the remaining cases.

[10] Modifiers or pronouns having מצוה as their antecedent make this impossible in Dt. 6.1 (זאת המצוה), 6.25 (המצוה הזאת), 11.22 (את כל המצוה הזאת . . . לעשותה), 15.5 (המצוה הזאת), 19.9 (את כל המצוה הזאת . . . לעשותה), Isa. 29.13 (מצות אנשים מלמדה), and 36.21 (מצות המלך היא).

[11] These are Isa. 36.21 and Esth. 3.3. The former verse is parallel to 2 K. 18.36 where the LXX translates מצוה as a singular. Both appear to be slips due to the greater frequency of the plural.

[12] We might differ in regard to 2 Chr. 8.14 and 30.12 but the LXX texts are likewise at variance in these instances.

[13] 2 K. 17.34, Ps. 19.8, 119.96, Prov. 6.23 (if a divine law is intended at all) and 2 Chr. 19.10.

MT agree on the singular the meaning is undoubtedly collective, and we must conclude that the LXX translators were not entirely consistent in their rendering of the Hebrew singular מצוה, where used with a collective force, with the Greek plural.

II

The Renderings of חק־חקה

The LXX does not distinguish between the masculine חק and the feminine חקה. The several renderings employed for חק and חקה are used indiscriminately for the masculine and the feminine form of the term as found in the MT.

Unlike מצוה, the term חק־חקה is not always rendered by the same Greek term. Three terms are frequently employed: *πρόσταγμα*, *δικαίωμα* and *νόμιμον* (occasionally also *νόμος*). Even these three, or four, do not exhaust the renderings. The term חק־חקה does not always designate a law and where it does not the LXX employs some rendering better suited to the meaning than one of the usual renderings.[14] Sometimes, however, where חק־חקה does designate a law an unusual rendering is employed.

UNUSUAL RENDERINGS

In Nu. 19.2 the term *διαστολή* which usually stands for ברית occurs and in 1 K. 11.11 (B) and Ezek. 18.21 *ἐντολή*—מצוה

ἀκριβασμός.

In 1 K. 11.34 and 2 K. 17.15 *ἀκριβασμός* occurs and in 1 K. 11.33 the related term *διακρίβεια*. The phrase containing חק is in all of these instances missing in LXX B. This corresponds to the state of affairs in Prov. 8.29 (see previous foot-note) where

---

[14] So in the following: Gen. 47.22 bis (*δόσις*), Ex. 5.14 (*σύνταξις*), [Ju. 5.15 (חקקי לב—A *ἀκριβασμός*, B *ἐξικνούμενος*)], Isa. 5.14 (לבלי חק—*μὴ διαλιπεῖν*), Zeph. 2.2 (diff. text), Prov. 8.29 (בשומו לים חקו—omitted in B, supplied in א by a 7th cent. hand; in A חק is translated by *ἀκριβασμός*), 30.8 (לחם חקו—*αὐτάρκη*), 31.15 (וחק לנערותיה—*ἔργον*), Job 14.5, 13 (*χρόνος*), 23.12 *κόλπος*—i. e., חיק), 23.14 (diff. text), 28.26 (*ἀριθμεῖν*), 38.10 (*ὅριον*), 38.33 (*τροπή*).

בשומו לים חקו is missing from B though present in A and is supplied in א by a 7th Cent. hand with חק translated by ἀκριβασμός. Likewise the same Greek word corresponds to (לב) חקקי in the A version of Ju. 5.15 though not in B. Now in 1 K. 11.33 and 34 and 2 K. 17.15 (?) the phrases containing חק may well be very late glosses and it is quite possible that in all three cases B preserves the earlier form of the Hebrew text and that the other versions present an emended Greek text made to conform to a Hebrew text to which the glosses had been added. The term ἀκριβασμός would then belong to this later hand.

NO RENDERING

Evidence from the LXX for the late glossation of the Hebrew text with the term חק־חקה or with phrases containing the term is less obvious than it was with respect to the term מצוה as noted above. To the three passages just mentioned: 1 K. 11.33 (gloss: וחקותי ומשפטי), 11.34 (gloss: אשר שמר מצותי וחקותי) and 2 K. 17.15 (gloss: וימאסו את חקיו ואת בריתו אשר כרת את אבותם) are possibly to be added Ex. 29.9 and Dt. 28.15. In Ex. 29.9 the LXX seems to have read והיתה להם כהֻנתי לעולם instead of MT והיתה להם כהנה לחקת עולם; however, since the MT contains a very natural reading the LXX may represent merely an inexact rendering. In Dt. 28.15 on the other hand חקותי which is absent from the LXX is very probably a gloss in the Hebrew (cf. v. 1). The gloss המצוה והחקים in Jer. 32.11 has been mentioned above under מצוה. Thus the LXX furnishes some evidence though scanty of late glossation of the Hebrew text with the term חק־חקה also.

We now turn to the four more frequent renderings of חק־חקה.

νόμιμον.

The use of the term *νόμιμον* to render חק־חקה is confined to the Pentateuch, Jeremiah, the first section of the book of Ezekiel, and the Book of the Twelve. In the Pentateuch it occurs all but exclusively in the phrase *νόμιμον αἰώνιον* which corresponds to the Hebrew חק(ת) עולם. This phrase occurs 38 times in the

Hebrew Pentateuch[15] and is all but invariably rendered by *νόμιμον αἰώνιον*. The exceptions are Ex. 29.9 where, as noted in the preceding paragraph, it is missing from the LXX for no apparent reason, and Nu. 15.15b where it is rendered by *νόμος* (see below). Although חק־חקה in the phrase חק(ת) עולם is thus consistently rendered by *νόμιμον*, חק־חקה is also rendered by *νόμιμον* in a few instances where it is not a part of the phrase חק(ת) עולם—in the Pentateuch only in Leviticus, outside of the Pentateuch only in Jeremiah (once), in the first section of Ezekiel, and in the Book of the Twelve. The passages are Lev. 10.11, 18.3, 26, 30, 20.23, Jer. 10.3, Ezek. 5.6 bis, 7, 18.19, 20.18,[16] Zech. 1.6 and Mal. 3.7,[17]—thirteen in all.[18]

In Ezekiel the use of *νόμιμον* to render חק־חקה is confined to that section of Ezekiel which Thackeray designates as *α*.[19] Perhaps the rendering *νόμιμον* for חק־חקה was a peculiarity of this translator's style.[20]

δικαίωμα AND *πρόσταγμα*.

The terms *δικαίωμα* and *πρόσταγμα*, which are by far the most frequent renderings of חק־חקה, likewise appear each to have been characteristic of the style of certain translators. At least it is interesting to note that only *δικαίωμα* occurs in the portions of Samuel and Kings which Thackeray[21] designates as *βγ* and γδ[22] and in the portion of Ezekiel which he calls ββ.[23] Thackeray holds that these sections have a style "akin to that of Theodotion"[24] and assigns the translation of βγ and γδ of Sam. and Kings to a "later," "Asiatic" school.[25]

---

[15] And only in the Pentateuch except for Jer. 5.22, where it has a different meaning (natural law) and is translated by a different term (*πρόσταγμα*).

[16] In 16.27 it does not designate a law.

[17] In Mich. 7.11 it does not designate a law.

[18] It may or may not be of significance that in three of the five passages from Leviticus (Lev. 8.3, 30 and 20.23) and in Jer. 10.3 the reference is to the customs or laws of other nations referred to as displeasing to Yahveh. In Lev. 18.30 A actually reads *ἄνομοι* instead of *νόμιμα*. Targum Onkelos likewise avoids the usual Targumic translation of חק־חקה, i. e., קים in the three Leviticus passages and employs the less usual term נימוס instead.

[19] *Gramm.*, p. 11.

[20] Compare the use of *νόμιμον* to render תורה in the second section of Ezek. *α*; see below, p.   and note 56.

[21] Ibid. pp. 10f.

This same rendering δικαίωμα likewise appears all but exclusively in the book of Deuteronomy.[26] This consistent use of δικαίωμα in Dt. as opposed to the scattered use of δικαίωμα, πρόσταγμα and νόμιμον in the other parts of the Pentateuch[27] agrees poorly with Thackeray's assertion[28] that the Greek Pentateuch is a unit, translated *en bloc*. It agrees rather with the opinion of Baumgärtel[29] that Dt. was not translated along with Ex., Lev. and Nu. and with that of Frankel[30] that Dt. was translated later than the remainder of the Pentateuch.

On the other hand the rendering πρόσταγμα occurs with the complete exclusion of the other renderings in those portions of Sam. and Kings, α and γγ,[31] assigned by Thackeray to an earlier

---

[22] In 2 Sam. 22.23, 1 K. 2.3 (order of terms reversed in LXX), 2 K. 17.8, 13, 19, 34, 37, 23.3.

[23] In Ezek. 36.27.

[24] Ibid. pp. 11, 13ff.

[25] The *Schweich Lectures*, 1920, pp. 16–28 and 114f. He does not, it should be noted, use the different renderings δικαίωμα and πρόσταγμα in distinguishing the different hands at work on these books but bases the analysis on other evidence.

[26] Twenty-five times, the only exceptions occurring in the adjacent verses 11.32 and 12.1—πρόσταγμα—and 16.12—ἐντολή, which except for this instance renders חק־חקה as we have seen only in Ezek. 18.21, and in B in 1 K. 11.11.

[27] Gen. 26.5, δικαίωμα; 47.26, πρόσταγμα. Ex. 15.25, 26, δικαίωμα; 18.16, 20, πρόσταγμα. Lev. 25.18, δικαίωμα; 18.4, 5, 19.37 (order of terms reversed), 20.8, 22, 26.3, 15 (LXX 14b), 43, 46 (order of terms reversed), πρόσταγμα; 10.11, 18.3, 26, 30, 20.23, νόμιμον. Nu. 27.11, 30.17, 31.21, 35.29 (36.13 not in MT), δικαίωμα. The חק(ת) עולם passages are not included.

[28] *Gramm.*, p. 13.

[29] *Beiträge zur Entstehungsgeschichte der Septuaginta*, Berlin, 1923, pp. 60ff.

[30] *Über den Einfluss der palästinensischen Exegese auf die alexandrinische Hermeneutik*, Leipzig, 1851, p. 230f.

[31] 1 Sam. 30.25, 1 K. 3.3, 14, 6.12, 8.58, 61, 9.4, 6, 10.11(A), 11.11, 38 (order of terms reversed).

Alexandrian translator[32] and in Thackeray's Ezek. *β*,[33] Chron.,[34] Ezra and Neh., and with the complete exclusion of *δικαίωμα* though together with *νόμιμον* in Thackeray's Jeremiah *α*[35] and Ezekiel *α*.[36] However matters may stand with regard to the time and place of the translation of the various sections mentioned, this much seems clear, that the choice between *δικαίωμα*, *πρόσταγμα* and *νόμιμον* to render חק־חקה was an individual matter depending upon the preference of the translator.

νόμος

May the same be said of the rendering *νόμος* which occurs thirteen times? The occurrences are Ex. 12.43, 13.10, Lev. 6.15 (LXX 22), 19.19, 37, Nu. 9.3, 12, 14a, 14b, 15.15a, 15b, Jos. 24.25 and Jer. 31 (LXX 38). 35. That most of them are in Ex., Lev. and Nu., i. e. in a certain more or less uniform section of the Old Testament, speaks in favor of such a supposition and it may on the whole be correct.

Other alternatives do indeed suggest themselves: (1) that, since in the LXX *νόμος* stands predominantly for the Hebrew תורה, this term stood in the Hebrew original of these passages[37] and was later altered in all cases into חק־חקה, or (2) that by using *νόμος* instead of a more usual rendering in these instances the LXX translators intended to imply that the laws in question had the character of תורה. A motive would have to be sought in the first instance for the late alteration of the Hebrew תורה into חק־חקה and in the latter for the attempt to represent just these laws as having the character of תורה. The diverse nature of the laws makes a single motive for either tendency difficult to discover. It may be a mere coincidence that six of the passages in which the exceptional rendering for חק־חקה occurs (Ex. 12.43, 13.10, Nu. 9.3, 12, 14a, 14b) are connected with two groups of laws dealing with the Passover. However a similar choice of an unusual rendering for חק־חקה occurs in another bit of Passover legislation—in Dt. 16.12 where as noted above (p. 267) ἐντολή (=מצוה) is employed. And Targum Onkelos likewise avoids a usual rendering for חק־חקה in the Passover laws of Ex. 12 and Nu. 9.[38] The divergence on the one hand in three separate groups of Passover laws (Ex. 12, Nu. 9, Dt. 16) and on the other hand in two different translations (LXX and Targ. Onk.) seems to have some significance. But then the divergence is not confined to laws dealing with the Passover.[39] Probably the present condition arose out of a combination of several factors which can no longer be distinguished with certainty.

---

[32] *Gramm.*, p. 13.

[33] 33.15, 37.24.

[34] 2 Chron. 33.8 contains *δικαίωμα* in the A version but it does not correspond to חק. 2 Chron. 19.10 is the lone exception but something seems to have gone wrong in this verse: תורה is translated here and only once besides (Jer. 32 [LXX 39]. 23) by *πρόσταγμα* making necessary the choice of some other term for the following חק.

[35] 5.22, 24, 51 (LXX 28). 10, 23—*πρόσταγμα*; 10.3—*νόμιμον*.

[36] 11.20, 18.9, 17, 20.11, 13, 16, 19, 21, 24, 25, 33.15, 43.11 bis, 18, 44.5, 24, 46.14—*πρόσταγμα*; 5.6 bis, 7, 16.27, 18.19, 20.18—*νόμιμον*; in 40–48 *νόμιμον* renders תורה (43.11, 44.5, 24), see below.

[37] The expression זאת תורת ה . . . is frequent in the MT whereas זאת חקת הפסח (Ex. 12.43, Nu. 9.12, 14a) stands alone. Likewise תורה אחת וגו' is of common occurrence while חקה אחת וגו' in Nu. 9.14b and 15.15a occurs in these two places alone. On the other hand the very fact that the expressions are unusual may argue for their originality.

DISCREPANCIES IN NUMBER

The number in the Greek does not always correspond to the number in the MT where חק־חקה is concerned. In the following cases where חק־חקה means "law" a Hebrew singular is rendered by the plural *προστάγματα*: Isa. 24.5 and Ezra 7.10; and in Ex. 15.25 by the plural *δικαιώματα*. Variants have a plural for a Heb. sing. in Ezek. 45.14 (A *προστάγματα*) and Ps. 99 (LXX 98). 7 (*προστάγματα* all except א*). In the following cases a Hebrew plural is rendered by the singular of one of the usual terms: 2 K. 17.34 (*δικαίωμα*), Jer. 5.24 (*πρόσταγμα*). A variant has the plural for the Hebrew singular also in Ezek. 33.15 (A, *πρόσταγμα*).

---

[38] In the Pentateuch גזירא renders חק־חקה only in Nu. 27.11, 35.29 (חקת משפט), Nu. 31.21 (חקת התורה) and in the Passover laws (Ex. 12.43 and Nu. 9.3, 12, and 14a).

[39] חק־חקה in Lev. 6.15 refers to the priestly sacrifice of consecration, in Lev. 19.19 to *kilayim* or, as in Lev. 19.37, in general to the laws of H, in Nu. 15.15 a and b to the *minḥah* offering, in Josh. 24.25 in general to laws and in Jer. 31.35 to natural laws.

We noticed a similar divergence between the MT and the LXX with respect to מצוה, the Hebrew singular being usually rendered by a plural. There the rendering was according to sense, a Hebrew collective being involved in all cases. We will see also that the LXX diverges from the MT in the rendering of תורות, frequently having the singular in place of the Hebrew plural. The latter divergence may be attributable to a certain *Tendenz.*

Where the singular חק־חקה is rendered by the Greek plural it is usually because the Hebrew term has collective significance as was the case with מצוה. So, clearly, in Ex. 15.25, Isa. 24.5, Ps. 99.7 and Ezra 7.10, probably in Ezek. 45.14 also. In 2 K. 17.34 the translators may have read the consonants כחקתם as a singular to correspond to the three other singular terms in the verse. An explanation does not suggest itself in the remaining cases.

III

THE RENDERINGS OF משפט

For משפט the LXX has several renderings. The more common are *κρίμα*, *κρίσις* and *δικαίωμα*.[40] Other terms sometimes occur.[41] When משפט means "law," however, renderings other than the three usual ones are extremely rare. Lev. 24.22 contains the term *δικαίωσις* which does not occur otherwise in the LXX and Ps. 119.91 contains the rendering *διάταξις* (but משפט here is probably not a law in the usual sense). To these two exceptions a second group is to be added and with them the list closes. They are cases in which משפט is rendered by *πρόσταγμα*, *νόμιμον*, *νόμος*, or *ἐντολή* terms which customarily render חק־חקה, תורה and מצוה, and which therefore give rise to the question whether or not one of these other terms stood in the Hebrew original and was later altered into משפט. There are five such passages. In Lev. 18.26 B has *πρόσταγμα* and A omits the term. *πρόσταγμα* can not represent an original חק here because חק is represented by the term *νόμιμον* immediately preceding. It can only represent משפט but possibly since nothing corresponds to משפט in A, the term was added both to the Hebrew and to LXX B by a later hand. Otherwise we must assume that the translator of Lev., who quite generally employs *κρίμα* or *κρίσις* to render משפט, here departed from his rule. As a matter of fact Lev. is one of the books in which the exceptions occur most frequently. Also in Lev. 19.37 משפט is translated by *πρόσταγμα*. The same verse as noted above contains the unusual rendering *νόμος* for חקות. In Ps. 7.7 likewise *πρόσταγμα* corresponds to משפט. In 1 K. 9.4 *ἐντολή* (usually = מצוה) corresponds to משפט. A comparison of this verse with 8.58 (מצותיו וחקיו ומשפטיו) where the LXX omits ומשפטין, 8.61 (בחקיו . . . מצותיו) and 9.6 (מצותי חקותי) makes it not impossible that משפטי in 9.4 stands in place of an original מצותי. In Jer. 49.12 משפט is rendered by *νόμος* (usually = תורה).[42]

---

[40] Forms of the verb *κρίνω* replace the noun in Ju. 4.5 (according to A), in Isa. 50.8 and Job 8.3, 27.2 and 37.23. These are instances of a free rendering or represent a slightly different text. In 1 K. 20.40, Zeph. 3.15, Prov. 13.23 and Job 34.23 the Greek is not a translation of our received text. In Ezek. 42.11 *ἐπιστροφάς* was doubtless added because of the preceding *ἐξόδους* and *κατὰ τὰ φῶτα* corresponds to MT וכמשפטיהן. In Dt. 4.1 according to A *ῥηματων* may be a copyist's error for *κριμάτων*.

[41] When משפט means "customary or prescribed manner, pattern" it is sometimes rendered by *σύνκρισις* (Nu. 9.3, 29.6, 18, 21, 24, 27, 30, 33, 37 and in Ju. 18.7 according to A), once according to A by *κρᾶσις* (1 Chron. 6.17), sometimes by *σύνταξις* (Nu. 9.14, 15.24, 1 K. 5.8), by *καθήκειν* (Lev. 5.10, 9.16) and *διάταξις* (1 K. 6.38)—freely also by *ἀρχή* (Gen. 40.13), *εἶδος* (Ex. 26.30) and *φῶς* (Ezek. 42.11, cf. preceding note). Likewise when משפט means "justice" in the abstract it is sometimes rendered by other terms. The most frequent is *δικαιοσύνη* (Isa. 61.8, Ezek. 18.21 according to B, Mal. 2.17, Prov. 8.20 according to A and א$^{\text{c.a mg.}}$, 16.11 and 17.23—justice

---

in court). For לא משפט in Prov. 16.8 *ἀδικίας* occurs and the infinitive *ἀληθεύειν* in Prov. 21.3 for משפט (עשת). אלהי משפט in Isa. 30.18 is rendered freely by *κριτὴς Κύριος ὁ θεὸς ὑμῶν*. Similarly מלך במשפט וגו' in Prov. 29.4 becomes *βασιλεὺς δίκαιος* and לעשות משפט in Prov. 21.7 *πράσσειν τὰ δίκαια*. The judgment hall or court room of 1 K. 7.7 is called *αἰλὰμ τοῦ κριτηρίου*, the trial or defense (משפט אביון) in Ps. 140.13 *δίκη*, and the decisions of the גורל in Prov. 16.33 are called *τὰ δίκαια*. In Ezek. 16.38, 23.45 bis, where משפט seems to mean "penalty, sentence," it is accurately rendered by *ἐκδίκησις*. In Dt. 21.17 (משפט הבכורה) and Ezek. 21.32 where משפט means "right, privilege" it is rendered by a form of *καθήκειν*.

[42] Ez. 11.12 which contains משפט as "law" is omitted from the Greek except in *θ'* where משפט is translated by *κρίμα*.

Thus we find a marked uniformity in the rendition of משפט in the LXX when משפט means "law." Four clear and three doubtful exceptions appeared. The clear exceptions are Lev. 24.22 (*δικαίωσις*), Lev. 19.37 and Ps. 7.7 (*πρόσταγμα*), Jer. 49.12 (*νόμος*); the doubtful exceptions Ps. 119.91 (*διάταξις*), Lev. 18.26 (A omits, B *πρόσταγμα*) and 1 K. 9.4 (*ἐντολή*).

THE RENDERINGS *κρίσις*, *κρίμα* AND *δικαίωμα*.[43]

The terms *κρίσις* and *κρίμα* seem to have been used interchangeably. To be sure we can observe a marked predominance of the one or the other in some of the LXX books. In Gen. only *κρίσις* occurs (three times) and in Isa. *κρίσις* occurs almost to the exclusion of *κρίμα* (thirty-six times as against three—1.27, 28.26, 31.16). On the other hand only *κρίμα* occurs in Neh. (five times); in Psalm 119 *κρίμα* occurs twenty times and *κρίσις* twice only (vss. 84 and 137); in the Book of the Twelve *κρίμα* occurs almost to the exclusion of *κρίσις* (twenty-four times as against one—Mal. 3.5). In Ezek. *α*, where *δικαίωμα* is also frequently employed, *κρίμα* occurs twelve times while *κρίσις* occurs only once (44.24). Only *κρίμα* occurs in *ββ* (36.27) and only *κρίσις* in *β* (39.21) but this may be accidental since each occurs only once. Otherwise the terms are used with almost equal frequency in the different books. Conclusions can hardly be drawn from these facts. The best we can say is that *κρίσις* and *κρίμα* being related terms apparently with the same connotation were interchanged by most translators though these frequently showed a marked preference for the one or for the other.

The rendering *δικαίωμα* for משפט also occurs in many sections alongside of *κρίμα* and *κρίσις*. In Ex.: 21.1, 9, 31 and 24.3 (*κρίμα* in 23.6, *κρίσις* in 28.15, 29, 30 bis); in Nu.: 15.16 (*κρίσις* in 27.5, 11, 21, 35.12, *κρίμα* in 35.24, 29, 36.13); in Dt.: 7.12 and 33.10 (*κρίσις* and *κρίμα* frequently throughout Dt.); in 1 K. *γγ*: 3.28, 8.45, 59 bis (*κρίμα* in 3.11, 28, 6.12

---

[43] In this section משפט is treated without distinction among its various meanings since the terms under consideration are used to render משפט regardless of its meaning.

[according to A], 10.9, 18.28 [A], κρίσις in 8.49, 11.33); in Ezek. α: 5.6 bis, 7 bis, 11.20, 18.9, 21 (A), 20.11, 13, 16, 18, 19, 21, 24, 25 (κρίμα in 5.8, 7.23, 27, 11.12 bis, 18.5 [AQ], 8, 27, 22.29, 23, 24 bis, 44.24, 45.9, κρίσις 44.24); in Mal. 3.22 (κρίσις in 3.5); in Prov.: 2.8, 8.20 (according to B א), 19.28 (κρίμα in 1.3, 2.9, 12.5, 21.15, 28.5, κρίσις in 16.10, 18.5, 24.23); in 2 Chr.: 6.35 (κρίμα in 4.7, 20, 6.39, 7.17 etc.). In 1 S. α only δικαίωμα occurs.

δικαίωμα, as would be expected, does *not* render משפט in those books or sections of books in which it renders חק־חקה. In Ex. it stands for משפט only in the second half of the book[44] (21.1, 9, 31, 24.3) and for חק־חקה only in the first half (15.25, 26), in Nu. it stands for משפט only in the first half (15.16) and for חק־חקה only in the second half (27.11, 30.17, 31.21, 35.29). In Sam. and Kings it renders משפט only in the α and γγ sections and חק־חקה only in the βγ and γδ sections; in Ezek. it renders משפט only in the α section and חק־חקה only in the ββ section. In the Book of the Twelve it renders משפט only in the second half (only Mal. 3.22, the last LXX verse) and חק־חקה only in the first half (Mi. 6.16). In Prov. and Job (in a variant to 34.12) it renders only משפט. There are three exceptions to this rather obvious rule. In Dt. where δικαίωμα represents חק־חקה in twenty-five instances it likewise represents משפט in 7.12 and 33.10. Also in 2 Chr. δικαίωμα represents both משפט (2 Chr. 6.35) and חק־חקה (2 Chr. 19.10, also 33.8 according to A). The case is less clear in this last instance (the difference may again be attributed to different hands) but in Dt. where δικαίωμα with such consistency represents חק־חקה and where משפט is all but invariably rendered by κρίμα or κρίσις (thirty-four times) the discrepancy appears strange. May it be that in 7.12 and 33.10 the משפט of the MT is secondary to an original חק־חקה? Nothing in the context speaks against an original חק־חקה in either passage though why here

---

[44] Thackeray, *Grammar*, pp. 54ff, and Hermann and Baumgärtel, *Beiträge*, pp. 79f., 37, reservedly divide the books of Ex., Nu., and the Twelve (among others) into halves assigning the translation or copying of each half of the books to a different hand. If the dividing line in Exodus is to be placed at about 23.17 as Thackeray and Baumgärtel suppose Ex. α contains δικαίωμα as a rendering of חק־חקה *and* of משפט.

חק־חקה should subsequently have been changed to משפט in the Hebrew it is difficult to imagine.

DISCREPANCIES IN NUMBER

In the following cases a plural in the LXX corresponds to a singular (משפט) in the MT: Ex. 15.25, 28.15, 30, 1 S. 8.3, 2 K. 17.26 (according to A), Isa. 10.2 (according to א), 32.1 (according to A), 41.1 (according to A), 42.1 (according to A), Ezek. 18.21 (according to A), Ps. 9.17, 119.160, Prov. 2.8, 12.5, 16.33, 21.7, 29.4, Ezr. 7.10 (according to A) and 2 Chr. 6.39. In the following cases a singular in the LXX corresponds to a plural (משפטים) in the MT: Dt. 33.21, Isa. 26.8, 58.2bβ, Jer. 52.9, Ezek. 5.8, 18.17, Hos. 6.5, Ps. 72.1, 103.6 and 119.137 and 156. These differences must be noted for the sake of completeness although an explanation does not suggest itself in many instances. The natural rendering of a collective term by a Greek plural, which we have already observed with respect to מצוה and חק־חקה, accounts for the rendering in Ex. 15.25 (the collective חק is likewise rendered by a plural), 2 K. 17.26 and Ezr. 7.10 (חק is likewise rendered by a plural). Perhaps also in Jer. 8.7 משפט was understood to be a collective term. משפטם in 2 Chr. 6.39 seems to have been read משפטֵם by the LXX though vocalized משפטָם in the MT. In some cases where a plural in the MT is rendered by a singular in the LXX, e. g. Dt. 33.21, Ezek. 5.8, Ps. 72.1 and 103.6, this may be a rendering according to sense, the Hebrew plural abstract being taken correctly as a singular. In a number of cases other versions support the rendering of the LXX.[45] In some of these cases the LXX reading seems preferable and may be original. Otherwise there is little ground for suspecting the MT. On the other hand it is difficult to imagine what purpose if any the LXX translators may have wished to serve in changing the number in the verses in question. The various meanings of משפט are the same in the plural as in the singular. Possibly copyists are largely responsible. One version (A) has a much larger number of discrepancies than the others.

---

[45] An early Hebr. MS. with Palestinian vocalization reads משפטֵי for משפט in Ex. 28.30b (cf. Kahle, *Masoreten des Westens*, II, 1930, p. 31*f.). In Ps. 119.160 some Hebr. MSS. and the Syriac have the plural as the LXX has. In Jer. 52.9 the parallel in 2 K. and the Syr. have the singular; in Hos. 6.5 the Syriac and the Targum have the singular and a different word division; in Ps. 72.1 the Syriac and Hieronymus have the singular; in Ps. 119.137 some Hebrew MSS. and Hieronymus have the singular; and in Ps. 119.156 some Hebrew MSS. have the singular.

IV

The Renderings of תורה

The customary rendering of תורה is *νόμος*.[46]

NO RENDERING

The word תורה appears in the MT with no equivalent in the LXX in Josh. 1.7, Isa. 42.21, Jer. 44.10,[47] Neh. 8.2 (according to A)[48] and 12.44.[49] Was תורה, like מצוה and משפט, added to the Hebrew text at a late period?

RENDERINGS OTHER THAN *νόμος*

Renderings other than *νόμος* are not uncommon although frequently these appear to be either free renderings, misreadings of the Hebrew or mistakes in the copying of the Greek text.

FREE RENDERINGS

In Isa. 1.10 according to א*, Prov. 7.2, and Ps. 119.142 according to א the LXX has *λόγος* (דָּבָר) for תורה and in Neh. 10.35 B has *ἐν βιβλίῳ* (בספר) for בתורה. These appear to be free renderings of the Hebrew, although it is not impossible, in view of the instances noted above where תורה appears to have been added to the Hebrew text in a MS. later than the one from which the

---

[46] In Dt. 17.18 and Josh. 8.32 משנה התורה is rendered by the compound term *δευτερονόμιον*. In Prov. 31.26 *ἐννόμος* is likewise a derivative of *νόμος*.

[47] It appears only in the margin of Q (as a plural). It is omitted also in the Syr.

[48] Possibly an oversight, though the Hebrew would be clear without it.

[49] *νόμος* was added in the margin of א by א $^{c.a}$.

LXX translation was made, that an original דבר in Isa. 1.10, Prov. 7.2 and Ps. 119.142 was also changed at a later date into תורה as the expression of a similar tendency.

Possibly we should include under this heading also the few cases where תורה corresponds to *ἐντολή* and *πρόσταγμα*. In Dt. 17.19, 2 K. 21.8 and 2 Chr. 12.1 and 30.16 the LXX has *ἐντολή*, the customary rendering of מצוה, and in Jer. 32 (LXX 39).23 and 2 Chr. 19.10 the LXX has *πρόσταγμα*, a usual rendering of חק־חקה. However, the exceptional nature of these renderings may suggest that in the former cases מצוה and in the latter חק־חקה stood in the text which lay before the LXX translators. This supposition can not hold for the one passage 2 Chr. 19.10 because חקים itself stands in the MT alongside of תורה, but there is nothing in the context of the other instances which precludes such an explanation. The evidence is insufficient for a decision.

VARIANTS DUE TO A MISREADING OF THE HEBREW

In Lev. 15.3 the LXX has *καὶ οὗτος ὁ νόμος τῆς καθαρσίας* for וזאת תהיה טמאתו evidently having misread תהיה as תורה.[50] In Ezek. 43.12 *διαγραφήν* suggests that the LXX read צורה for תורה. In Prov. 31.26 in addition to *ἐννόμως* the term *τάξις* appears to be a translation of תורה. Perhaps the Hebrew was misread as תור. For בתורת י' in 2 Chr. 31.4 the LXX seems to have read בעבודת בית י' (*ἐν τῇ λειτουργιᾴ οἴκου κυρίου*). Or does the LXX represent the earlier form of the text later altered to תורה in accordance with a tendency to increase the number of references to the תורה in the Bible (as above)?

VARIANTS DUE TO ERRORS IN COPYING THE GREEK TEXT

The rendering *ὄνομα* (שֵׁם) which occurs in Isa. 42.4, according to א^{c} in Isa. 42.24,[51] according to A in Ex. 16.4 and Ps. 119.165, and according to B in 2 Chr. 6.16 is probably an error of a Greek copyist[52] as the presence of variants with *νόμος* suggests. The only case in which a variant does not occur is Isa. 42.4. Is it possible also here and perhaps in some of the other instances that an original שם was changed to תורה as the result of the tendency mentioned above?

---

[50] The Sam. text has חהיה. Frankel (*Einfluss*, p. 161f., note b) attributed *νόμος* to a late glossator of the LXX.

[51] א* had *ἀκούειν τῆς φωνῆς τοῦ νόμου αὐτοῦ* with קול extra.

OTHER RENDERINGS

In Prov. 1.8 and 6.20 LXX has *θεσμός* and in 31.27 (the repetition of v. 26) *νομοθεσμος* (according to א*; in א$^{c.a}$ and B it is the adverb *νομοθέσμως*). In Job 22.22 (קח נא מפיו תורה) LXX has *ἐξηγορίαν*. These are synonyms of *νόμος* which seemed preferable to *νόμος* to the translators of Proverbs and Job.

νόμιμον

In Gen. 26.5, Jer. 26 (LXX 33).4,[53] Ezek. 43.11, 44.5, 24, Hos. 8.12 and Prov. 3.1 LXX has *νόμιμον*, another (cf. *πρόσταγμα* above) customary rendering of חק־חקה. In Gen. 26.5 *νόμιμον* cannot stand for חק־חקה because חק immediately precedes תורה in the Hebrew and is rendered in the LXX by a usual equivalent. Aside from the quotation from Zeph. in Ezek. 22.26 where the LXX translates *νόμος* the term תורה occurs only four times in Ezekiel: 43.11 and 12, 44.5 and 24. In the second of these four (43.12) the Greek *διαγραφὴν* points to an original צורה or a misreading of the Hebrew word (see above). The other three are the chief exceptions to the equivalence *νόμιμον*=חק. But in these verses as in Gen 26.5 *νόμιμον* cannot be taken as pointing to an original חק because in each case חק occurs along with תורה in the MT and is represented by *πρόσταγμα*. In Hos. 8.12 the awkward רֻבּו תורָתִי is rendered by . . . *πλῆθος, καὶ τὰ νόμιμά μου* . . . as though rendering . . . רֹב וְתורותי . . . with תורה rendered by *νόμιμον*. In this verse and in Prov. 3.1, where again *νόμιμον* renders תורה, there is no reason for supposing that originally חק stood in place of תורה; on the contrary, in view of the fact that חק does not otherwise occur in Hosea or Proverbs[54] it seems that תורה is the correct reading.

---

[52] So Frankel to Ex. 16.4, cf. *Einfluss*, p. 104.

[53] A has *νόμος*.

Since there is therefore no ground for suspecting the MT some other explanation must be sought. Possibly the forms of *νόμιμον* came into the Greek as a result of copyists errors for an original *νόμος* in which case the variant *νόμος* in LXX A to Jer. 26 (LXX 33).4 is the original form of the Greek text as against *νόμιμον* in the B version of this passage. However if this were the explanation we should probably expect more variants such as that in Jer. 26; the rendering *νόμιμον* also appears rather too frequently to be attributed to such an error. Perhaps, instead, *νόμιμον* is to be regarded merely as an accepted though less frequent rendering of תורה alongside of *νόμος*. The use of *νόμιμον* to render תורה is with one exception confined to the portions of the Bible in which *νόμιμον* is used to render חק-חקה, the Pentateuch, Jeremiah, Ezek. and the Book of the Twelve (see above).[55] It appears therefore that with certain translators the term *νόμιμον* was preferred to such an extent that they frequently employed it to render both the term חק-חקה and the term תורה neglecting to distinguish between them as other translators did.[56]

DISCREPANCIES IN NUMBER

The singular תורה of the MT is not consistently rendered by a singular in the LXX. Of the instances mentioned in the preceding paragraphs where a term other than *νόμος* corresponds to תורה in the MT the term frequently occurs in the plural where

---

[54] In Hosea not at all, in Proverbs not in this meaning; in Prov. 8.29 חק means "limit" and in 30.8 and 31.15 "allotted portion."

[55] The exception is that *νόμιμον* occurs also in Prov. as a rendering of תורה and as we noticed above חק־חקה does not occur in Prov. with the meaning "law."

[56] Thackeray (*The Septuagint and Jewish Worship*, London, 1921, p. 120) who observes that *τά νόμιμα* is a rendering "common to the two portions of Ezekiel α" (1–27; 40–47) and "absent from β" fails to add that in 1–27 it is a rendering of חקות or חקים and in 40–47 of תורות. The case was different with *δικαίωμα* (see above p. 273). In those writings in which *δικαίωμα* appeared as a rendering of חק־חקה it was not likewise employed as a rendering of משפט.

תורה is singular. The instances of such divergence are Jer. 26.4 (except A which has *νόμος*), Hos. 8.12, Prov. 3.1—*νόμιμα*; Dt. 17.19 and 2 Chr. 12.1—*ἐντολάς*; Prov. 1.8 and 6.20—*θεσμοί*; Jer. 32.23—*προστάγματα* (with the Ketib) and Prov. 7.2—*λόγοι*. The reason for the plural is probably this, that whereas *νόμος* might signify a body of laws, with collective force, the other renderings do not have such a significance in the singular. The one term *ἐντολή* does, to be sure, but it is quite as generally used in the plural to render the singular מצוה. In order to give the sense of the Hebrew, therefore, where other terms than *νόμος* were employed it was necessary to use the plural of these terms.

On the other hand where *νόμος* is employed the plural was unnecessary. There is no case where תורה in the singular is rendered in all LXX versions by the plural *νόμοι*. In a few instances, to be sure, a variant in the Greek has *νόμοι*. These are B to 2 K. 14.6, A to Jer. 26.4 (other versions have *νόμιμον* as noted above), B and a scribal correction in א to Jer. 31.33, a marginal correction in Q to Jer. 44.10, and א to Prov. 28.7 (in Prov. 6.20 מצוה is rendered by *νόμοι*). This plural *νόμοι* is exceptionally rare (see the next paragraph). No conclusions can be based on these variant readings though they can be noted should the plural in any of these cases seem otherwise preferable.

When we turn to those passages in which the MT has the plural תורות we note a much greater proportion of discrepancy. Although תורות occurs twelve times in the MT it is rendered by the expected plural *νόμοι* once only (Neh. 9.13). Instead of the plural in seven instances the singular *νόμος* occurs: Ex. 16.28, 18.16, 20, Lev. 26.46, Isa. 24.5, Ps. 105.45, Dan. 9.10. In the remaining four the plural *νόμιμα* occurs: Gen. 26.5, Ez. 43.11, 44.5, 24 (see above). Although not unknown, as is evidenced by the variant readings mentioned in the previous paragraph and the one occurrence in Neh. 9.13, the plural *νόμοι* is not customary in the LXX. Was this because the Hebrew text which lay before the LXX translators contained only the singular? If so it is hard to account for the subsequent alteration of the Hebrew singular into the plural of the MT. Probably the Hebrew plurals of the MT are the original readings and the singular *νόμος* was the accepted rendering of the Hebrew plural.

How can the singular *νόμος* appear to be a sufficient rendering for the plural תורות? A principle seems to lie behind this usage in the LXX. The term *νόμος* seems to denote a *collection* of laws and therefore to be a sufficient rendering for the plural. But more than that it seems to denote the Law Book of which a plural is out of the question and therefore to be the *necessary* rendering in place of a plural.[57] (If the sense seems to require a plural the plural of some term other than *νόμος* must serve). This thought is offered for what light it may shed on the cultural background of the LXX translation. It may be apropos to compare the controversy later associated with the names of Hillel (Shab. 31a), Rabban Gamaliel (Sifre Dt. 351), and R. Johanan b. Zakkai (Midr. Tann. to Dt., Berlin, 1909, p. 215). The opponent of R. Joḥanan in the Midrash argued that the singular form ותורתך in Dt. 33.10 points to only one Torah.[58] Do the roots of this controversy reach back into the period of the LXX translation?

V

THE RENDERINGS OF עֵדָה–עדות

The term showing the fewest inconsistencies even proportionally, is עדות (עֵדָה) which, in the plural, designates divine laws. The plural forms עֵדֹת and עֵדוֹת of the MT are consistently rendered by the plural of *μαρτύριον*. The plural of *μαρτύριον*, however, occurs eight times in the LXX where the MT has the singular עֵדוּת. These are Ex. 25.16, 21, 30.6a, 36, 40.20, Lev. 16.13, Nu. 17.25 and Ps. 119.88. In the Psalm verse the plural is certainly correct (as in vv. 2, 14, etc.) representing a better text than the MT. In the other cases it is less likely that the LXX preserves the correct reading. In Ex. 30.6a, for example, it would be precarious, in the face of the frequent occurrence of the phrase ארון העֵדות in the MT and its exact rendition in the LXX, to suggest that in this one instance we should read ארון

---

[57] Witness the thoroughgoing avoidance of the plural *νόμοι*.

[58] Cf. J. Z. Lauterbach, The Pharisees and their Teachings, *HUCA*, vol. VI, 1929, footnote 39.

הָעֵדוֹת as the LXX has it. The same reasoning applies to Lev. 16.13 (הכפרת אשר על העדת— cf. Ex. 27.21, 30.6b, and Lev. 24.3)[59] as well as to Ex. 30.36 and Nu. 17.25 (לפני הָעֵדֻת—cf. Ex. 16.34 [AF], Nu. 17.19). However, it is to be observed that the three passages Ex. 25.16 and 21 and Ex. 40.20 are the only passages in the Bible in which mention is made of the עֵדֻת which is to be put or is put into (אֶל) the ark and that in all of these cases the LXX renders with the plural. Does the LXX preserve a better reading than the MT (the consonants would be the same)? And are these עדת which are to be put into the ark the עדת referred to in Deut. 4.45, 6.20, etc? The ארון הָעֵדֻת and the אהל העדת or משכן העדת could as easily have been so called if they contained the עדת as if they contained an עדות. Or has the LXX translator merely misread the Hebrew consonants?

VI

CONCLUSION

The results are not great nor startling. This study has in the main merely cleared the way for a more general study of the history of the Hebrew terms for law. Towards such a study it has contributed variously:

For one thing it has tested the reliability of the MT with respect to every occurrence of the terms under discussion. What evidence the LXX could furnish has been brought in detail. The evidence against the MT is in the main inconclusive and such as is only to be used in conjunction with evidence from other sources though in many cases it is suggestive.

It seems apparent from this study that a MS. lay before the LXX translators which contained fewer references to the מצוה and the תורה than does our MT. This means that these terms were being added as glosses by Hebrew scribes at a late date. The evidence is less certain for glossation with the terms חק־חקה and משפט.

---

[59] The evidence is not so clear. The parallels for this phrase in the MT are all different in the LXX. In Ex. 27.21 עדות is rendered by διαθήκη = ברית; in Ex. 30.6b the LXX omits the words לפני הכפרת אשר על העדות, and in Lev. 24.3 the LXX omits העדות. The LXX is probably correct in omitting the phrase in Ex. 30.6b and possibly correct in the other instances. If the LXX is correct הכפרת אשר על העדות stands without a parallel.

It seems also that to the LXX translators it was not a matter of indifference which of the Greek synonyms they used for the different Hebrew terms but they felt that each of the Hebrew terms called for its individual rendering. This distinction among the several terms was so marked that where more than one term in the Greek now corresponds to a single Hebrew term the difference must usually be explained by assuming that different hands were at work on the translation of the various books and sections of books, these corresponding to divisions previously ascertained. In other words although the translators did not always agree upon the renderings employed, each translator took care to distinguish among the terms.

Two conclusions combine to make another: although with respect to the occurrence of the several terms for law the Hebrew text which the LXX translators employed had not yet attained the form presented by our MT, the LXX translators nevertheless felt themselves generally obliged to distinguish in translation among the several Hebrew terms. We see then that during the period when the Hebrew text was taking on its final form the terms for law were not thought to be merely synonymous. Thus doubt is cast upon the accepted view that in the last stages of glossation of the Hebrew text these terms were frequently added in a purely arbitrary fashion.

These details also appeared: the two negative facts that the LXX is of no help to us in checking up on the use of the masculine and feminine terms חק and חקה in the Hebrew, the LXX translators having made no distinction between them; and that the LXX likewise did not distinguish carefully between singular and plural forms particularly of מצוה and in a lesser degree of the other terms. A Hebrew collective term frequently appears as a plural. The plural of תורה is on the other hand frequently rendered by a singular, possibly as an expression of the thought that there could be but one Torah.

From the point of view of LXX criticism these results also appeared:

The literal character and consistency of the LXX translation, as far as the five terms under consideration are concerned, has seemed thoroughgoing—more so upon careful analysis than the concordance material at first indicates.

The conclusions reached by Thackeray and others with regard to the several hands at work upon the translation of Sam. and Kings, Jer., Ezek., and, to a lesser degree, the Pentateuchal books were variously supported by the renderings of the terms here considered.

THE PRESENT STATE OF TEXTUAL CRITICISM OF THE OLD TESTAMENT

By JOSEPH REIDER, Dropsie College, Philadelphia

TEXTUAL criticism, in its pristine form and primitive state, is one of the earliest biblical disciplines, as may be proved by a reference to the Talmud and the Masora.[1] Of course, like every other discipline it was fixed and normative, that is it was based on certain well established rules and regulations from which none dared depart.[2] Not only were deviations from the traditional text based on sound philological and exegetical bases but were also conditioned by their verisimilitude and veracity. In this state textual criticism continued throughout the Middle Ages, and when in the wake of the Renaissance it began to develop greater strength and a more independent attitude towards the object of its research it still remained within certain restrictions and adhered to certain well formulated principles for the sake of form. Even the textual criticism of the seventeenth and eighteenth centuries, the age of the *catenae* or chain commentaries on the Bible, was careful and circumspect, cautious and conservative, hence it exerted a lasting beneficial influence and is still of paramount value in true biblical interpretation. Let me single out the comprehensive and voluminous *Critici Sacri* undertaken on the publication of the London Polyglot by several English scholars and containing comments of Seb. Münster, Vatablus, Castellio, Drusius, Hugo Grotius and others (London 1660); or the similarly voluminous *Synopsis Criticorum aliorumque S. Scripturae Interpretum* (London 1669–1676). Many a critical remark in these collective volumes still holds good because it is based on solid rules of textual criticism. Again let me mention a few individual commentators or biblical critics of those days who left their indelible stamp upon biblical criticism, such as the well-known A. Schultens (1686–1750), who endeavored to obtain in Arabic the fundamental meaning of Hebrew words, and whose textual comments on the Scriptures may still be used with great profit; or Ernst Friedrich Karl Rosenmüller (1768–1835) whose theme for his inaugural address was *de sano philologiae orientalis, praesertim arabicae, usu in codicis hebraei interpretatione* and whose monumental *Scholia in Vetus Testamentum* in 16 parts (Leipzig 1788–1817) is a veritable treasure house of exegetical and philological scholarship and a storehouse of the best and most valuable comments then in existence;[3] or the more recent commentators Friedrich Wilhelm Carl Umbreit (1795–1860), Wilhelm Gesenius, Heinrich Ewald, Ferdinand Hitzig, and Franz Delitzsch. To all these scholars of a past generation textual criticism of the Bible was a strict discipline based on definite rules and principles, a fine art fashioned after a fixed form and design which must not be trifled with. Hence the lasting effect and the fructiferous results of their laborious research and philological observations.

---

[1] Comp. Abraham Berliner, *Beiträge zur hebräischen Grammatik im Talmud und Midrasch* (also in *Jahresbericht des Rabbiner-Seminars für das orthodoxe Judenthum* pro 5639); Wilhelm Bacher, *Die Anfänge der hebräischen Grammatik*, Leipzig 1895; *Die älteste Terminologie der Jüdischen Schriftauslegung*, Leipzig 1899; *Die exegetische Terminologie der Jüdischen Traditionsliteratur*, Leipzig 1905; Hermann L. Strack, *Prolegomena Critica in Vetus Testamentum Hebraicum*, Lipsiae 1873; *Die Dikduke ha-Teamim des Ahron ben Moscheh ben Ascher und andere alte grammatisch-massorethische Lehrstücke* . . . herausgegeben von S. Baer und H. L. Strack, Leipzig, 1879; V. Aptowitzer, *Das Schriftwort in der rabbinischen Literatur*, Heft I–V, Wien 1906–1915; Adolf Schwarz, *Der hermeneutische Kontext in der Talmudischen Literatur*, Wien 1921.

[2] I have in mind the seven exegetical rules of Hillel, the thirteen rules of Rabbi Ishmael, and the thirty-two norms of Rabbi Eliezer ben Jose. Comp., for instance, Leo Bardowicz, *Die Abfassungszeit der Baraita der 32 Normen für die Auslegung der heiligen Schrift*, Berlin 1913.

But all this has changed in modern times. It appears that textual criticism of the Scriptures, a gentle art of the literary variety, has gone through the same process of development as the graphic and plastic arts: just as the latter degenerated in modern times from a formal and well regulated discipline to an amorphous and lawless creation, to impressionism, futurism, cubism, and other excrescences whose sole aim is to shun well-established rules and long accepted traditions, so also the former suddenly absconded from its long trodden and well beaten path and struck out into a new and wild road full of pitfalls and stumbling blocks, chiefly unbridled speculation and wild emendation. In both cases the departure is due to a surcease of old designs and a blind search for new forms on the part of a wild and restless age. Be that as it may, it is impossible to escape the conclusion that this constant negation of law and order and ceaseless striving after new effects is bound to produce chaos in a discipline which depends largely on fixed rules and immutable norms.

---

[3] Rosenmüller faithfully records the ancient versions and the medieval Hebrew commentators (Rashi, Ibn Ezra, Ḳimhi, Abravanel etc.) as well as modern Christian exegetes and philologians.

Indeed, we are already witnessing the detrimental results of this negative and destructive tendency, for, besides a certain amount of legitimate mutations in the Bible, both vocalic and consonantal, which a sane and tempered criticism is wont to approve, there has cropped up in recent years a great and unwieldy mass of far-fetched and unnecessary emendations which, far from lending any help towards the elucidation and understanding of the biblical text, threatens to bring confusion and chaos into it. And anyone who surveys the abundant output of biblical commentaries and general disquisitions on the text of the Scriptures in recent years is unpleasantly struck by this negative tendency of its criticism which aims to find fault with everything that is at all not easy of comprehension, and instead of endeavoring to penetrate to the inner meaning of difficult passages jumps to hasty conclusions and condemns such passages off-hand as ungenuine and spurious, then proceeding to emend them in accordance with a biassed mind and preconceived notions, not realizing that "amendments are seldom made without some token of a rent." In this orgy of wholesale emendation every school is wont to participate, the higher as well as the lower critics, the comparative as well as the metrical school. It is the great and widely ramified historical-literary school of biblical criticism which first undermined the respect due to the Hebrew text of the Scriptures, and then the metrical theorists, like Bickell and Grimme, Sievers and Rothmann, destroyed that respect completely. In their wake Duhm and Marti started the ball of wholesale emendation rolling, and since then it has been rolling faster and faster and with ever increasing impetus. Duhm was the principal offender, for in his undoubted capacity as a brilliant analyst and unprecedented iconoclast he presumed to be a supreme arbiter of biblical style instead of a mere expositor of the existent biblical text and often sat in judgment over the prophets' writings as a preceptor who bluepencils the composition of his pupil. Only to-day we are beginning to realize that this antipathetic attitude to the Scriptures precluded a real comprehension thereof and that consequently his numerous lucubrations on the text of the Bible are nothing but the emanation of a rigid and frigid speculative mind which somehow is pleased to remain destructive rather than constructive. But not only Duhm is responsible for this transgression. Practically all modern commentaries and sets of commentaries are guilty of this laxity, the *Göttinger Handkommentar zum Alten Testament* edited by Marti, the Polychrome Bible under the editorship of Paul Haupt, Kittel's *Biblia Hebraica* with its plethora of marginal readings, Sellin's *Commentar zum Alten Testament*, and to a certain extent also the great *International Critical Commentary*.[4]

Textual criticism of the Scriptures may be grouped in four divisions, being based either on ancient versions of the Bible, on conjectural emendation, on some metrical theory, or on derivation from cognate Semitic languages. All of these are in operation, although some are more in vogue than the others. It is safe to say that the last is the least popular. Now it is the purpose of this paper to point out that in at least the first three divisions scholars and exegetes have deviated from the right path and hence erred in the interpretation of the Bible.

I

One of the most frequent sources of biblical emendations is the most ancient Greek version, the so-called Septuagint, which undoubtedly is the earliest witness on the genuineness or ungenuineness of the text of Scriptures. It is of primary importance in textual criticism, while all the other versions are only of secondary importance. From time immemorial it served to check certain inaccuracies and extravagances in the masoretic text, for which every biblical scholar, orthodox or unorthodox, is bound to feel grateful. It would hardly be just to assume with Hengstenberg, Nöldeke and their followers that the usefulness of the Septuagint in the reconstruction of the masoretic text is almost nil. The fact is that great scholars like Thenius, Wellhausen, and Driver, in their commentaries on the Books of Samuel, have shown how the Septuagint can sometimes be utilized for the correction of the masoretic text. Also Cornill, in his textual analysis of the Book of Ezekiel, has pointed out a way of reconstruction of that difficult text. But the use of the Septuagint for such a purpose is not so easy: It requires as great, if not greater, critical acumen to disentangle the *variae lectiones* of the Alexandrine version as the complicated masoretic text, for as many manuscripts have come down to us of the former as of the latter, and often it becomes necessary to determine which of them really contains the genuine reading. Paul de Lagarde, one of the foremost Septuagint scholars of modern times, has grappled with this knotty problem and after laborious and painstaking research has evolved certain canons of textual criticism of the Septuagint which he carefully laid down in his epoch-making treatise *Anmerkungen zur griechischen Übersetzung der Proverbien* (1863) and in the preface to his Lucianic Septuagint entitled *Librorum V. T. canonicorum pars prior Graece*, Göttingen 1883. In the latter he formulates the following pertinent principles: 1) A critical text of the Greek Old Testament cannot be based on the authority of any one manuscript or without regard to the grouping of manuscripts; 2) the restoration of the text common to any one family must not be regarded as more than a step forward in the right direction; 3) even a critical text, when reached by these or other means, will not be free from the element of uncertainty.

---

[4] *Die Schriften des Alten Testaments in Auswahl* by Hugo Gressmann, Hermann Gunkel, M. Haller, Hans Schmidt, W. Staerk and Paul Volz (Göttingen 1911–1912) do not come under consideration here, because, like Kautzsch's Bible, they deal with religious, aesthetic, and literary-historical questions, but sail clear of philological strictures.

However, these and other just observations advanced by prominent Septuagint scholars are disregarded by modern commentators on the Scriptures, who in their haste to compile their commentaries compare any individual text of the Septuagint and at the least difference between the Hebrew and the Greek jump to the conclusion that the latter is better and superior to the former and henceforth proceed to correct the Hebrew text accordingly. They really violate one of the most fundamental canons of biblical criticism, viz. that before the Hebrew text is emended in accordance with the Greek text care should be taken to ascertain whether the latter is genuine beyond any cavil or doubt. Very often the task is even more complicated. Recent research, no doubt following the clue of the dichotomy of biblical books, has tended to affirm the same principle in their Greek equivalents. At least H. St. John Thackeray has endeavored to prove from style that some books of the Septuagint were done in parts by various translators and probably at various times,[5] and necessarily the conclusion forces itself upon us that the translation may have been effected at intervals in response to liturgical needs. We are now pretty certain that the Pentateuch was translated first, being the most necessary part of the Bible in the hebdomadal readings of the synagogue, but similarly the prophetical parts constituting the Haftarot and read at the synagogue after the Pentateuchal sections must have been translated next apart from the books in which they occur, and probably by different translators, hence the variety in style. All these are problems which a conscientious critic of the Bible must take cognizance of before he proceeds to emend the masoretic text, first to make sure that the Hebrew text requires emendation, second whether the Greek text after which it is to be emended is genuine beyond doubt, and third whether the particular Greek style can yield the required reading.

Unfortunately, very few critics and exegetes operate now on the basis of these sound principles. Most of our Bible commentators choose the short cut to superficial comparison and slipshod emendation. Flagrant violations of this kind are quite numerous, and one meets them in practically every recent commentary on the Bible. The marginal notes of Kittel's *Biblia Hebraica* are full of them, and one could write a bulky volume pointing out the inaccuracy and baselessness of most of these emendations. Under the limitations of this paper it will suffice to quote only a few examples which are symptomatic of the whole. In I Kings 20.40 ויהי עבדך עשה הנה והנה, עשה is emended to שעה or פנה on the basis of *περιεβλέψατο* in the Septuagint and מתפני in the Targum, but as a matter of fact the Hebrew phrase is an idiomatic expression for "turning hither and thither" or "being busy elsewhere," and should not be emended at all. After all action and movement are closely related concepts, and one is reminded of the Arabic root فعل which means both "to move" and "to act."[6] In Jer. 2.6 בארץ ציה וצלמות the last word is emended to וגלמודה on the basis of the Septuagint's *ἄκαρπος*, despite the fact that the Hebrew is a standard phrase and the Greek is evidently a free rendering. In Ez. 9.4 the suggestion is made that instead of והתוית תו the Septuagint read ונתת תו, *καὶ δὸς σημεῖον*, not realizing that the latter is a free rendering of a Hebrew idiom which is untranslatable into Greek. Nor is it fair to remark to Am. 4.6 נקיון שנים that the Septuagint, Targum and Peshitta read קְהִיוֹן (Septuagint *γομφιασμὸν ὀδόντων* is explained by Hesychius as *συνθλασμόν*, *ἢ συντριμμόν*, *ἢ αἱμωδιασμὸν ὀδόντων*; Targum אַקְהָיוּת שִׁנַּיִן, Syriac ܩܗܝܘܬ ܫܢ̈ܐ); all we may say is that these versions derived נקיון from the root קהה, a process of etymologization common to all of them, whether they be literal or paraphrastic. One is tempted to apply to the editors of Kittel's Bible what Wellhausen said of G. Jahn, the author of commentaries on the Books of Esther, Daniel, and Ezekiel according to the Septuagint, that his general preference of the Septuagint to the masoretic text is entirely unfounded and his retroversion from Greek into Hebrew is hasty and faulty, reminding one of the Hebrew style of a beginner.[7] Let us hope that the new and improved edition of Kittel's Bible, which is now in process of publication under the editorship of Kahle, will be free of these incongruities and hasty concoctions.

---

[5] *The Septuagint and Jewish Worship*, A Study in Origins (The Schweich Lectures 1920), London 1921.

Of recent publications I wish to mention a few outstanding textual commentaries which bear out the point I made. Naturally, since I am not at liberty to write a book on the subject, I must confine myself to only one or two examples from each of them. To begin with, the Rev. C. F. Burney, in his commendable commentary on the Book of Judges (London 1918), still inclines to Graetz's baseless emendation ויעבר for the difficult ויצפר מהר הגלעד in 7.3, referring to the Greek καὶ ἐκχωρέιτω (depart, slip away) which as a matter of fact cannot and never does render the Hebrew עבר. Lectio difficilior praestat! No doubt ויצפר is the original reading, and it is quite possible that there was a Semitic vocable צפר meaning "depart, pass away."[8] Characteristic of the German school of biblical criticism is Ernst Sellin's *Das Zwölfprophetenbuch* (Leipzig 1922) which in spite of its caution and circumspection is quite lax here and there in the suggestion of new readings. Thus in Hos. 13.5 אני ידעתיך במדבר בארץ תלאובות Sellin reads with Prätorius לא בית for תלאובות after ἐν γῇ ἀοικήτῳ of the Septuagint, not realizing that the Greek here is simply a free rendering of the Hebrew word. Mi. 6.8 הגיד לך אדם מה טוב he reads as an interrogative on a par with the preceding two sentences: ההגיד לך אדם, *Haben dir denn Menschen gesagt?*, claiming to follow the text of the Septuagint; but the latter, εἰ ἀνηγγέλη σοι, ἄνθρωπε, τί καλόν, tallies quite well with the Hebrew original and does not imply any change, not even the customary הֻגַּד for הִגִּיד found on the margin of Kittel's Bible, for the passive for the active is a mode common to Greek translators of the Bible; as to the interrogative εἰ, I have a suspicion that it is a dittograph from the preceding lines where this particle occurs three times, or else it represents erroneously the ה of הגיד; at any rate Sellin's construction of אדם as subject is quite inferior to the Greek, which is also the Jewish, construction of this word as a vocative. Another commentator, Giacomo Mezzacasa, in his critical study on the Book of Proverbs,[9] likewise exhibits laxity in his handling of the Alexandrine version. As an instance let me point out 16.28 איש תהפכות ישלח מדון ונרגן מפריד אלוף, for which the Septuagint has ἀνὴρ σκολιὸς διαπέμπεται κακά, καὶ λαμπτῆρα δόλου πυρσεύσει κακοῖς, καὶ διαχωρίζει φίλους. Mezzacasa assumes the Hebrew to have been ישלח מדון ונר ומפריד אלוף, but an analysis of the sentence shows that *πυρσεύσει κακοῖς* is a doublet of *διαπέμπεται κακά* and that *λαμπτῆρα δόλου* stands for נרגן decomposed into two words נֵר רְגָן, which finds some support in the comment of Rashi: ע"י ריגונו ותרעומתו. Also W. O. E. Oesterley, in his recent commentary on the Book of Proverbs (London 1929), leans too much to the side of the Septuagint, which in this book is notoriously unreliable. Thus he prefers the Greek version of 7.22 to that of the Masora for no sufficient reasons. The Hebrew sentence הולך אחריה פתאם כשור אל־טבח יבא וכעכס אל מוסר אויל is rendered in Greek as follows: *ὁ δὲ ἐπηκολούθησεν αὐτῇ κεπφωθείς, ὥσπερ δὲ βοῦς ἐπὶ σφαγὴν ἄγεται, καὶ ὥσπερ κύων ἐπὶ δεσμούς, ἢ ὡς ἔλαφος τοξεύματι πεπληγὼς εἰς τὸ ἧπαρ*. Some commentators have supposed that the Greek text constitutes a doublet, but as a matter of fact, as admitted by Oesterley, this is not so: "It looks as though there were a doublet in the Septuagint which was due to the fact that the translator was puzzled by a badly written Hebrew text, and was in fact not sure what the words were; two alternatives suggested themselves, and as he could not make up his mind which of the two to choose he put both into his version, and wrote:

---

[6] Comp. Bibersten-Kazimirski, *Dictionnaire Arabe-Français*, II, 614.

[7] *Göttinger gelehrte Anzeigen* for 1902, Heft 2.

---

[8] Perhaps related to Arabic سفر, "to set out on a journey."

[9] *Il Libro dei Proverbi di Salomone*, Roma 1913.

And as a dog (is led) on a lead,
Or as a stag is struck with an arrow through his liver."

which is perfectly right as far as the confusion of the Septuagint goes, but entirely wrong with reference to a badly written Hebrew text. The consonantal Hebrew, to say the least, is correct as it stands: whether we accept the vocalic variants פְּתָאִם and יָבָא or not—and I personally am inclined to follow the masoretic פתאם, though not in the common meaning "suddenly," but rather in the sense of "cajoled" which alone *κεπφωθείς* implies—it must be admitted that the Hebrew with all its difficulty yields better sense than the Greek, especially if we read, as has latterly been suggested, וּכְעָכֵּס אל מוסר איל "and as a stag is restrained by the cord" (of the snare).[10]

---

[10] Box, in a private communication to Oesterley *ad locum*, suggests וּכְעָכֵּר לְמוֹסַר אַיִל "and as a stag is checked (restrained) by the cord (of the snare)".

The most violent and at the same time most unjustified injuries to the masoretic text were dealt, curiously enough, by a Catholic student of the Septuagint, Franz Wutz, who dished up an antiquated theory in order to assault the veracity of the Hebrew text. This theory, pompously pronounced in his book *Die Transkriptionen von der Septuaginta bis zu Hieronymus* (Stuttgart 1925), is to the effect that the Greek translators of the Sacred Scriptures did not produce their version from a Hebrew text but rather from a Greek transcript of the Hebrew, similar to the one found in the second column of Origen's Hexapla. On the basis of this fanciful hypothesis, Wutz, who is wont to give vent to his florid imagination, endeavors to prove the existence of a biblical text somewhat different from the masoretic variety. Now, as already hinted above, Wutz's theory is not new, for it found expression more than 150 years ago in O. G. Tychsen's *Tentamen de codicum hebraicorum Veteris Testamenti MSS.* (Rostock 1772).[11] Even in recent times Ludwig Blau, in his *Zur Einleitung in die Heilige Schrift* (Budapest-Strassburg 1894), pp. 80–83, was of opinion that the second column of Origen's Hexapla containing the Hebrew text in Greek transcription could not have been the work of Origen who knew very little Hebrew, but must have been in existence like everything else in the Hexapla. An exhaustive refutation of Wutz's hypothesis was offered by Johann Fischer in his treatise *Zur Septuaginta-Vorlage im Pentateuch* (Giessen 1926). Nevertheless Wutz is relentless in his attack upon the masoretic text, and in his commentary on the Book of Psalms (Munich 1925) he proceeds with his destructive work on the basis of his pernicious theory, offering all kinds of wild readings, which may be characterized as an inchoate conglomerate of Arabic and Syriac vocables, with no fixed rules of syntax or idiom. As an instance let me quote 37.20 ואיבי יהוה כיקר כרים, where he converts the last two words into מזדרכלים, deriving it from Syriac זרכל meaning "strut, swagger." That the phrase is difficult may be conceded, but no one with the least knowledge of biblical style will accept such an extravagant and far-fetched solution.

---

[11] According to L. Blau in the *Revue des Études Juives*, LXXXVIII (1929), 19.

58.9 כמו שבלול תמס יהלך נפל אשת בל חזו שמש, which is a long standing crux interpretum, he dissolves into the following colorless phrase כמו טפול מתמס(ה) יַהֲלַךְ כנפל אש תְּבַלְּחֶנּוּ שמש, which he renders thus: *wie flüssig gemachtes Harz verzehrt wird, wenn Feuer hineinfällt, möge die Sonne ihn vertrocknen.* Not only is this phrase more Arabic than Hebrew in its vocabulary (טפול "lime," הלך "consume," בלח "dry up"), but it also fails to yield adequate sense and hence has no marked advantage over the masoretic text. 87.4 אזכיר רהב ובבל לידעָי הנה פלשת וצר עִם־כוש he construes אזכיר as "buffalo," derived from Arabic ذكير, and עִם־כוש as עֻמְכוּשׁ, Arabic عُمكُوس, "an ass," which, by the way, is not found in any of the standard Arabic dictionaries except that of Brugsch and consequently is quite late. I might state parenthetically that very few of Wutz's inventions are in any way supported by the Greek translation: most of them are fictions of a fecund mind, elaborated with the aid of Semitic lexica, so that even a radical scholar like Gunkel considers Wutz's textual criticism far from sound.[12]

And now let me quote some examples from Ball's commentary on the Book of Job (Oxford 1922). 18.13 יאכל בדיו בכור מות is rendered in the Septuagint κατέδεται τὰ ὡραῖα αὐτοῦ θάνατος, which Ball retroverts thus: יאכַל שַׂפְּרוֹ מָוֶת, believing that the repeated בדיו was omitted and that τα ωραια αυτου stands for בכור, originally בשרו, misread by the translator as Aramaic שפרו. As a matter of fact τα ωραια αυτου stands for בדיו misread as הדו or perhaps as בריו. In 30.23 כי ידעתי מות תשיבני ובית מועד לכל חי where the Septuagint reads

οἶδα γὰρ ὅτι θάνατός με ἐκτρίψει
οἰκία γὰρ γῆ παντὶ θνητῷ

Ball assumes ישופני for תשיבני, but as a matter of fact they read ישביתני; as to γη, it is no doubt a fragment or remnant of συνταγή, a word used by all the Greek versions (especially Aquila) for מועד. And while I am at the Book of Job let me mention also that Buttenwieser's commentary on Job (New York 1922), like Ball's, relies too much on the Septuagint for a reconstruction of the Hebrew text. As an instance may serve 38.2 מי זה מחשיך עצה במלין בלי דעת which, as usual in the Greek Book of Job, is expanded into the following phrase:

---

[12] See the introduction to his recent commentary on the Psalms in the *Göttinger Handkommentar zum Alten Testament*, Göttingen 1926, p. XIII.

> *τίς οὗτος ὁ κρύπτων με βουλήν,*
> *συνέχων δὲ ῥήματα ἐν καρδίᾳ, ἐμὲ δὲ οἴεται κρύπτειν*

which is retroverted into Hebrew: מי זה מעלים עצה מני החושך מלים בלבו יסתירם ממני, "who is it that seeketh to conceal his design from me, by holding back his words in his mind? Doth he think that he can hide them from me?" and adopted instead of the masoretic text together with 40.8

> *μὴ ἀποποιοῦ μου τὸ κρίμα*
> *οἴει δέ με ἄλλως σοι κεχρηματικέναι*
> *ἧ ἵνα ἀναφανῇς δίκαιος*
>
> Despise not my chastisement!
> Dost thou think I would have revealed myself to thee,
> Were it not that thou mightst be proven righteous!

all for the purpose of demonstrating that the object of God's revelation is not to condemn Job, as generally accepted, but rather to vindicate him in the eyes of his friends. It is really remarkable what abundant use Ball and Buttenwieser make of the Septuagint for a reconstruction of the Book of Job, although they must be aware that the Greek version of this book is in a hopeless state.

Finally let me point out what our learned Doctor Bewer, in his excellent *Der Text des Buches Ezra* (Göttingen 1922), p. 6, says of Batten's *Commentary on Ezra and Nehemiah* in the International Critical Commentary Series (New York 1913), that it follows the Greek text blindly, accepting all kinds of errors from it and translating them into supposed Hebrew, as if to give the impression that they constitute the original and genuine text of the Bible.

II

Next to emendation based on the versions is conjectural emendation which is more negative and destructive because it is more arbitrary and wilful. More sins are committed in its name than in the name of any other critical discipline of the Bible, and latterly not only accredited scholars but also mere tyros have been operating with it to the detriment of the biblical text. It is a game every candidate for a degree in Semitic philology likes to play with great gusto, and each one endeavors to outdo the other in exuberance of imagination and fecundity of fancy; with the result that conjectural emendation has become so wild and unbridled that it may be said to put to shame the moderate conjectural emendation of a Houbigant,[13] Hitzig, Gesenius, Ewald or Delitzsch the elder. The hyper-critical and super-analytical tendency set in at the close of the last and the opening of the new century, and there can be no doubt whatsoever as to the foremost protagonist thereof. Duhm more than anybody else is responsible for this flood of wild emendations and far-fetched conjectures, and it is indeed a pleasure to see him duly censured by Torrey in his recent book on Deutero-Isaiah.[14] Duhm introduced the process of atomization based on logical analysis, which is admirable in itself but can hardly be applied to Oriental creations of a highly imaginative tenor. With an occidental yard-stick fashioned in ultra-rational Germany he measured every poetical line and sentence of the Bible as if it were a mere mental lucubration and not a tremendous cardiac outburst, discarding whatever appeared to him overlapping and amputating whatever was rent from its context, with the result that the masoretic text was mutilated and disfigured and a new revised text took its place. Every biblical scholar is familiar with Duhm's flippant tone in discussing the text of Isaiah and Psalms: he even ventures to say that the one hundred and nineteenth psalm is "the emptiest production that ever blackened paper," while his attitude to Isaiah, or rather to the three Isaiahs, is that of a teacher to his pupil to whom he prescribes rigid rules of composition and knocks him over his fingers whenever he departs from these prescribed rules. Now this is not the proper attitude of a great scholar and critic whose purpose ought to be constructive, not destructive, and whose function should be to endeavor to comprehend the text as it is, not as it ought to be. Admittedly every scholar is entitled to exercise ingenuity in inventing new texts, but then

[13] *Notae Criticae in universos Veteris Testamenti libros*, Frankf. a.M. 1777.

[14] *The Second Isaiah*, A New Interpretation, New York 1928, passim.

let him not call them by biblical names. It is safe to say that no other ancient literature would tolerate such wilful manipulation and deliberate mutilation, and, as was pointed out heretofore, even in the heyday of textual criticism in the classical languages no one dared to introduce there such radical emendation as is being done in the Bible. For properly speaking criticism is not anarchism, and there rarely is any enduring profit in critics "that pervert the Prophets and purloin the Psalms." Conjectural emendation above all should be practiced with great caution, for anyone who lets himself be carried on its high and buoyant waves will surely land on the rocks. As an exact science it has its rigid rules and specific requirements which cannot be overstepped with impunity. And then one ought to bear in mind that the Hebrew Scriptures, with all their difficulties and incongruities, which no honest critic would try to underestimate, are not what Friedrich Delitzsch at the setting of his power of judgment has characterized them to be, "a veritable medley of erroneous, untrustworthy, unreliable numbers; a true labyrinth of false statements, misleading remodellings, revisions and misplacements, hence also anachronisms; an incessant jumble of contradictory accounts, unhistorical free inventions, legends and fables, in brief a book full of intentional and unintentional deceptions, partly self-deceptions, a very dangerous book in the use of which the greatest caution is necessary."[15] And at this date it must be admitted that attempts such as Delitzsch's *Die Lese-und Schreibfehler im Alten Testament* (Berlin 1920) or James Kennedy's more recent *An Aid to the Textual Amendment of the Old Testament* (Edinburgh 1928) to impute a superabundance of mistakes and errors to the Old Testament have proved futile, a "grosse Täuschung," to use the somewhat sensational title of another book by Delitzsch attacking the veracity of the Hebrew Sciptpures. These books as a rule are dictated by bias and not sober thought, and perhaps they should not be classed together with the more serious attempts of emendation and reconstruction.

It is gratifying to learn that sane and thoughtful scholars here and there are beginning to realize the futility of wholesale conjectural emendation in the Scriptures and are proceeding to register their protests against it. Thus William Walter Cannon has this to say on our topic:[16] "Interpretations which rest on extensive alterations of text are desperate expedients. The editors who adopt such a system have renounced the explanation of the poem and are explaining something else. It is not to be thought that such a system can ultimately give satisfaction or that an enduring exegesis can be built on the shifting and insecure basis of subjective criticism . . . It is the duty of an expositor to explain the text as he finds it and not to leave out large portions, and this is the reason why the older commentaries are often found by a student to be much more helpful than their modern successors." Another scholar, Prof. Burney, in his preface to Ball's commentary on the Book of Job, confesses very modestly: "Those of us who have worked for many years at the text of the Old Testament may have been responsible for the suggestion of a large number of emendations in corrupt and difficult passages; yet few indeed are the passages in which we can flatter ourselves that we have actually recovered the original, and settled the textual difficulty once and for all." And most recently Prof. Torrey, in his splendid book on the second Isaiah, which is a great credit to American biblical scholarship and must be counted among a very few books of recent date which really constitute a great contribution to biblical knowledge, protests vehemently against the uncritical method of procedure in reconstructing the text ad libitum. "No scholar can fail to see that these momuments of ancient poetic art, survivals of Arabian or Hebrew or other great literatures, have suffered to some extent, often considerably, in the long process of transmission. It is easy to appreciate this fact, but to proceed to reconstruct is nearly always to enter upon a desperate task. Profound study, aided by a literary insight which is both sober and sympathetic, can hope now and then to remove spurious verses or verse-members and restore well-understood forms on the basis of conjecture. An easy-going 'rectification' on an extensive scale is the worst thing that can happen. There is a clear difference between occasional surgery and habitual butchery."[17]

---

[15] *Die grosse Täuschung*, II, 52f.

---

[16] *The 68th Psalm*, Cambridge 1922, p. 57.

But these utterances of conservative scholars are like voices calling in the wilderness. The fact is that the adherents of conjectural emendation in recent times have well-nigh run amuck, and in their intense desire to attack everything in the Bible indiscriminately have overridden the most fundamental rules of literary criticism. Take such standard canons of textual criticism as *brevior lectio potior* (the shorter reading is preferable) or *lectio difficilior vulgatiori praefertur* (harder are better than easier readings), by which every man who indulges in literary criticism is bound to be guided: they have been thrown overboard by the modern school of Bible critics who seem to be guided by the exact opposites of these maxims. This holds true of almost all the leading sexegetes of recent years, and to quote one is to quote them all. The radical tendencies of Haupt's Polychrome Bible are too well known to need comment here. But I wish to mention some of the leading lights on the biblical firmament who flagrantly and thoughtlessly violate the rules mentioned above. Thus Duhm rewrites Jer. 11.16b לקול המולה גדלה הצית אש עליה ורעו דליותיו as follows: רָקַב רָמַם בְּלֵחוֹ דַּלָּה הַנִּצָּה בָּאַשׁ עָלֵהוּ רָעוּ דָּלִיּוֹתָיו, *Morsch ward er, faulig in seinem Safte, schlaff hängt die Blüte; es verfault sein Laub, hässlich stehen seine Ranken*. The masoretic Hebrew is quite simple and straightforward, while the emendation, though correct grammatically, is ponderous and awkward, clogged and artificial, and bears in it the earmarks of excogitation and dictionary consultation. In his commentary on Ps. 8.2 אשר תנה הודך על השמים Duhm assumes the obvious reading אשירה נא instead of the difficult אשר תנה, while Grimme and Schlögl and after them Gunkel extend the sentence to read אֲדַרְתְּכָה בארץ הודך על השמים. Again in 68.28 he emends רֹדֵם to קִדֵּם and רִגְמָתָם to לְעֻמָּתָם, in 90.5 זרמתם שנה יהיו to זְרַעְתָּם שָׁנָה שָׁנָה, despite the fact that the masoretic text constitutes the more difficult reading. Hermann Gunkel is conservative compared to Duhm, yet who can follow Gunkel the whole length of his textual criticism? He is undoubtedly a master in the literary and religious-historical method, but in textual criticism he falls short like his colleagues and collaborators. Thus he rewrites Ps. 17.11 אַשּׁוּרֵנוּ עתה סבבונו עיניהם ישיתו לנטות בארץ as follows: אמרי עתק סבבוני עיניהם ילטשו לְרַטְּתֵנִי לארץ, *mit frechen Worten umgeben sie mich, ihre Augen wetzen sie, mich zu Boden zu stürzen*, which, it must be admitted, is perfectly correct and commendable Hebrew, but by what stretch of imagination could the present Hebrew text have resulted from it? In 22.17b, כארו ידי ורגלי he still prefers the ordinary אסרו or כתרו to the difficult כארו; in 42.5 he still follows Halevy and Budde in reading אַדִּרִם instead of אֲדַדֵּם; in 68.28 he emends רִגְמָתָם to רֶב־מְתֵם, and so on. 68.15 בְּפָרֵשׂ שַׁדַּי מלכים בה תַּשְׁלֵג בצלמון, which is difficult beyond measure, is rewritten by Gunkel as follows: בְּסַפִּר דֵּי־מְלָכִים תְּשֻׁלַּב בְּצַלְמָהּ, "sapphires enough for kings are fastened to her (the dove's) form"—an impossible construction, both incoherent and ungrammatical. It is quite possible that Ps. 74.4 שמו אותתם אתות "they have set up their own signs for signs" is not genuine, but on what basis is one to assume with Gunkel that the original reading was שִׁלְּמוּ אַוַּת תַּאֲוָתָם, *sie vollführten das Gelüste ihrer Lust*? In 78.9 בני אפרים נושקי רומי קשת הפכו ביום קרב is converted into בנים פרוּעִים מְשַׁקְּרִים כְּקֶשֶׁת הֲפוּכָה, *zügellose Söhne trügerisch wie der Bogen, der am Tage des Krieges versagt*, a correct phrase in itself, but the simile in it is quite foreign to biblical usage. The chief objection to the masoretic text is the term נשק in connection with the word קשת, but as a matter of fact נשק "kiss" goes back to the Arabic نسق, "set in order," and its primary meaning was no doubt "come in touch with," hence "embrace" (comp. Gesenius-Buhl$_{16}$ *s. v.*).[18] James Kennedy[19] considers Ps. 62.4 תהותתו על איש, which according to the Arabic of Damascus means "to threaten somebody,"[20] as an impossible hapaxlegomenon which should be resolved into תֹּהוּ תְּאַוּוּ "will you earnestly desire a nonentity," though one wonders what this has to do with the parallel תְּרַצְּחוּ. Paul Volz in his commentary on Jeremiah 2.16 (Leipzig 1922) suggests very awkwardly יֵרְעוּ וְקָדְרוּ בָזוֹ instead of ירעוך קדקד, rendering *sie sind verzagt und trauern darob*, an impossible construction. Rothstein in his annotations to Ezekiel in Kittel's Bible is guilty of many thoughtless emendations, of which I wish to mention only two: 12.18 לחמך ברעש תאכל ומימיך ברגזה ובדאגה תשתה he proposes ברעדה instead of ברעש, not realizing that רעש and רעדה are synonymous in Hebrew;[21] 13.5 לא עליתם בפרצות ותגדרו גדר על בית ישראל he very flippantly suggests that perhaps we ought to read לא עלו בפרץ ולא גדרו גדר, not knowing that the construction with one negative extending its influence to the following clause parallel with it is quite idiomatic in Hebrew.[22] A. Bruno[23] rewrites the text of the Book of Micah in an inelegant Hebrew to suit a certain fancy of his that the ruler of antiquity mentioned in the fourth chapter of Micah as coming back and ruling again over Israel has reference to the iconoclast Jerubbaal of Judges chapters 6–9. Dr. Melville's attempts in his *Textual Discoveries in Proverbs, Psalms, and Isaiah* (London 1927) may be designated as abortive and far from the mark, for in his inventions and emendations he sails roughshod over the most elementary rules of Hebrew grammar and syntax.

---

[17] *The Second Isaiah*, p. 173f.

---

[18] Lagarde, *Novae psalterii graeci editionis specimen*, p. 24, and Barth, *Etymologische Studien*, p. 46f., derive נשק "kiss" from Arabic نشق, "smell."

[19] *An Aid to the Textual Amendment of the Old Testament*, p. 180.

[20] Comp. Delitzsch's commentary *ad loc.*

Nor is Ernst Sellin's ambitious commentary on the Minor Prophets (Leipzig 1922) much of an improvement in this respect. He adopts many far-fetched emendations of his predecessors and adds a good deal himself. To gauge his great ingenuity I wish to dwell a little while upon the wild antics and deliberate perversions enunciated in two of his recent brochures *Mose und seine Bedeutung für die israelitisch-jüdische Religionsgeschichte* and *Wie wurde Sichem eine israelitische Stadt?* (Leipzig 1922), in which he apparently aims to shock the reader through an arbitrary manipulation of the masoretic text and to display ingenuity at the expense of truth. In the former he advances a new theory with reference to the life and death of Moses, basing it chiefly on the Book of Hosea: 12.14 ובנביא העלה יהוה את ישראל ממצרים shows clearly that Moses was a prophet and not a priest or a Levite with priestly functions; 6.5 על כן חצבתי בנביאים הרגתים באמרי פי, according to him, bears clear reference to the transmission of the Ten Commandments through Moses (reading הוריתים for הרגתים), similarly 8.12 and 14.3 (always, of course, with emendations); but the most striking reference he locates in 5.2, where he reads ושחת שטים העמיקו and renders "the priests dug a deep pit for Moses in Shittim," meaning "they killed Moses in Shittim," and he finds support for this interpretation in Num. ch. 25, where the Israelite slain with the Midianite woman is identified as Moses, whose wife came from Midian; this he corroborates through 12.14f., where he reads in the last sentence: הכעיסו אפרים ומררו ישראל ודמיו עליך אטוש וחרפתו ישיב לך אדוניו; finally in 9.9ff. he finds that not only Moses but also his children were slain by the people, reading בשטים בבית אלהיו העמיקו שחתו . . . אפרים כראש ראיתי, לציד שת לו הנביא, וישראל הוציא אל הורג בניו. With great ingenuity and an overpowering imagination Sellin traces this new prophetic tradition concerning Moses in the pre-Hoseanic (Amos, Elijah, Nathan, Samuel, Deborah) and the post-Hoseanic prophets (First and Second Isaiah, Jeremiah, Second Zechariah), going to the extent of identifying even the Ebed Yahweh of the Second Isaiah with Moses. In the latter brochure he makes a minute analysis of the story of Abimelech in Judges chapter 9, reaching the conclusion that there are two distinct sources for the conquest of Shechem (about 1150), an authoritative ancient source (A) and a later legendary source (B). According to the former Abimelech, the son of Jerubbaal, who is distinct from Gideon, stirs up the people of Shechem, Canaanites ruled by Hivite princes, to revolt against their rulers and proclaim him, who is half Canaanite, as their king; the people rise and murder their seventy princes and proclaim Abimelech as King; after three years a counter revolution breaks out under the leadership of Gaal, which is frustrated by the strong hand of Abimelech, though he suffers death through it. According to the latter God causes enmity to break out between Abimelech and the Shechemites, who lie in wait to rob the caravans on their way to the king; when this is reported to Abimelech he falls with his army upon the Shechemites unawares, when they are out harvesting in the field, and utterly destroys them and razes the city to the ground. These two sources are elaborated through a minute analysis of the chapter and a comparison with the other traditions about Shechem in the Book of Genesis. Sellin thus gets two Abimelech narratives, one very ancient and pre-Yahwistic, supposedly composed by the Priest Ebiathar about 1000, and another, moral and legendary, of a later date, aiming to expose the cruelty in the conquest of Shechem and the punishment of the perpetrators of this crime. Sometime during the eighth or seventh century the two accounts were combined by an editor, who did his best to efface the first and accentuate the second, the result being the ninth chapter of Judges with its doublets and otherwise inconsistent statements. Sellin finds reminiscences of the first account in various passages of the Book of Hosea, while the second account seems to underlie the various statements about Shechem in the Book of Genesis. It is a very ingenious theory, but not everything that is ingenious is necessarily true. The great fault of this brilliant scholar is that he obtains his drastic results through an arbitrary manipulation of the masoretic text, passing anything done in this line by other competent critics.[24] Somehow one feels that no credence should be given an hypothesis which requires such drastic emendations of the traditional text.

---

[21] Comp., *e. g.*, the phrase נרעש ונפחד in the introductory prayer הנני העני ממעש recited by the precentor on the High Holidays.

[22] See Gesenius-Kautzsch-Cowley, *Hebrew Grammar*, §152 z.

[23] *Micha und der Herrscher aus der Vorzeit*, Leipzig 1923.

A veritable flood of emendations came through commentaries on the Book of Job, which by its difficult nature is made to invite speculation. The greatest offender here was Harry Torczyner who in his commentary on Job (Wien 1920) mercilessly cut the masoretic text to pieces and gave it both a new form and a new content to suit a preconceived logical conception of the book. Needless to say, his reconstructions, though couched in a correct Hebrew, are rarely above board, as may be seen from the following specimens. 3.8 he reads יעכרהו עכרי לילית "the cursers of Lilith will curse him" for העתידים ערר לויתן, claiming that this is a fit parallel to the first half of the verse יקבהו אררי יום; but in the first place עכר never means "to curse," and secondly it is difficult to imagine the corruption of the one phrase into the other. 6.6 he proposes בדברי חלמות for בריר חלמות, which is an easier for a harder reading. 6.14 למס מרעהו חסד ויראת שדי יעזוב he reads למה סר מרע יחסר וירא שדי יֵעָזֵב, which is admirable Hebrew but cannot be explained as the original of the present sentence. Again, 10.16 ויגאה כשחל תצודני ותשב תתפלא בי he emends to בְּדָאָה כחש תעידני ותְשַׁפּת תִּפְלָה בי, "contrivance and falsehood dost thou produce against me and addest injustice unto me," which only remotely resembles the masoretic text. Also C. J. Ball in his voluminous commentary on the Book of Job (Oxford 1922), which operates not only with Semitic languages but also with Chinese, has advanced many unnecessary emendations which are quite contrary to our critical maxims. Thus in 5.5 ואל מצנים יקחהו he reads prosaically וכל מזונם יקחהו and in 15.29 he substitutes the simple שלום for the difficult מנלם, which reminds us of the great discovery of another biblical critic that the difficult סֶלָה in the Book of Psalms is a corruption of סְלַח.[25] I might mention also Georg Richter who in his *Textstudien zum Buche Hiob* (Stuttgart 1927) advances a number of insipid and inarticulate emendations, such as 3.6. תקחהו שאול שללה, *Hätte doch die Unterwelt sie zu ihrer Beute genommen*, for יקחהו אפל; 18.2 המטעם ייננו בעיניך, *Ist unser Wein fade nach deinem Urteil?* for נטמינו בעיניכם; 41.7 גוו אחת מצַוָּר מספר אפיקי סגנים, *sein Rücken ist aus einem Stück mit dem Nacken*; *er besteht aus immer gleich viel Rinnen von Schilden*, for the masoretic גאוה אפיקי מגנים סגור חותם צר. Another expositor, Gottfried Kuhn,[26] suggests the following emendation in Eccl. 12.11: וכמשמרות נטועים בצלעי סְפִנוֹת נתנו מֵהֵרָעַ אחד, "and like nails planted in the planks of ships, which are put there without one being broken," instead of the masoretic בעלי אספות נתנו מרעה אחד, not realizing apparently the syntactical impossibility of the last clause.

---

[24] Comp., *e. g.*, his reading Hos. 6.11 כשור שנתים for בשובי שבות עמי, eliminating גם יהודה altogether, without any substantiation.

Finally let me give a most recent specimen of textual criticism as applied to the Book of Daniel. Prof. R. H. Charles of Oxford, well known through his scholarly editions of the Apocrypha and Pseudepigrapha, has published recently a very comprehensive commentary on the Book of Daniel in which he endeavors to prove that the entire Book of Daniel was written originally in Aramaic in 165 B. C. E. and that chapters 1–2.4a and 8–12 were translated into Hebrew ten years later for the purpose of including the book in the Hebrew canon. This translation into Hebrew, according to Charles, was made by three different hands which may still be traced in chapters 1–2.4a, 8–10 and 12, and 11. Now his contention that the translator of 1–2.4a is not the same as that of 8–12 is based on seven arguments none of which holds good on close inspection. In the first place he claims that in the first chapter we find waw apodosis three times whereas in the last chapters this rare classical Hebrew idiom does not occur once. As a matter of fact there is such a case of waw apodosis after time determination, though not after a casus pendens, in 10.4–5: ...וביום עשרים וארבעה לחדש הראשון ואני הייתי על יד הנהר הגדול ואשא את עיני וארא, where we might consider 4b as a circumstantial clause and 5 the apodosis of 4. Then he makes the point that the translator of the first Hebrew section uses twice the oratio obliqua instead of the oratio directa (1, 3 ויאמר ... להביא and 2.2 ויאמר לקרא), while in the last chapters only the oratio directa is used. But his argument does not hold good, because side by side with the oratio obliqua we find also the oratio directa in the opening chapter, and besides there was not much of an opportunity to use the oratio obliqua in the last chapters which are largely prophetic-eschatological and not of a narrative character. Certainly this is not enough of a criterion upon which to base a theory concerning the division of translators. As to the third point, the use in 1.4 of two consecutive nomen regens with a nomen rectum (ספר ולשון כשדים), which the author styles an un-Hebraic idiom, it is to be recalled that this idiom with all its awkwardness is really not so rare as the author thinks: A lengthened series of genitives occurs not only in Ez. 31.16 מבחר וטוב לבנון and Prov. 16.11 פלס ומאזני משפט, to which the author calls attention, but also in Gen. 47.9 ימי שני חיי אבתי, 2 Sam. 20.19 שְׁלֻמי אמוני ישראל, Is. 10.12 פרי גדל לבב מלך אשור, ibid. 11.2 רוח דעת ויראת יהוה, ibid. 21.17 ושאר מספר־קשת גבורי בני קדר, and Job 12.24 לב ראשי עם הארץ etc. Again, the differentiation between the meaning of עמד לפני in the first chapter and in the last chapters is mere quibbling, for actually there is not such difference of connotation: עמד לפני always means "to stand up before, make a stand before," and when combined with the negative particle לא it necessarily means "to withstand." His fifth argument is that in 1.2 the translator uses אדני "not found in 8–12." As a matter of fact this theophorous word occurs numerous times in Daniel's prayer in chapter 9, thrice in 9.19 alone. With reference to the sixth point, that 11.7 עשה ב' is used in the same sense as עשה עם in 1.13, it should be pointed out that the masoretic text in the former passage is probably corrupt, as attested to by the variant reading of the Septuagint (*καὶ ποιήσει ταραχὴν* = ועשה מהומה). Finally, the argument that the translator of the first chapter is fond of singular forms which have apparently plural suffixes like משתיהם, may be countered with the following pleonastic forms: 8.11 הרים for הָרֵם, 9.12 דבריו for דְּבָרוֹ, 9.18 פקחה for פְּקַח and 11.12 ירום for וְרָם. Apparently this characteristic is common to both the opening and closing chapters of the book, which as a matter of fact are couched in the same Hebrew style and therefore must have been written by one and the same man. Thus Charles' spectacular theory of three authors for the Hebrew elements of the Book of Daniel must fall to the ground.

---

[25] Dr. Johannes Bachmann, *Alttestamentliche Untersuchungen*, Berlin 1894, pp. 81ff.

[26] *Erklärung des Buches Koheleth*, Giessen 1926.

III

Side by side with and supplementing conjectural emendation is the reconstruction of the masoretic text based on some metrical theory. Since Robert Lowth's *Lectures on the Sacred Poetry of the Hebrews*, published in the middle of the eighteenth century, many theories have been advanced as to the nature and essence of Hebrew prosody, notably those of Bickell, Grimme, Sievers, and Rothstein, but none of them have proved satisfactory, for the simple reason that they all involved an extraordinary amount of textual excision or increment, so as to change entirely the form and purport of some splendid passages and sections of the Bible.[27] Instead of explaining the text these men were rewriting it to suit their particular theory. Lowth, who was pretty sure that all possible solutions of Hebrew metrics had already been proposed, and that there was nothing new in the hypotheses of any of the metrical theorists, was probably right when he stated in 1753: "every hypothesis which pretends to define the laws of Hebrew metre, and to prescribe the numbers, the feet, the scanning of the lines, may, I think, be easily overset; for to that hypothesis another, directly contrary, yet confirmed by arguments equally forcible, may, I am persuaded, be successfully opposed." And indeed, one wonders at the sublime confidence with which each scholar advances his metrical theory which generally contradicts his colleague's theory regarding the same passage and the same book. A striking instance is pointed out by George Buchanan Gray[28] who refers to Procksch's commentary on Genesis (Leipzig 1913) which gives a general adherence to Sievers' metrical theory, though frequently and greatly differing from him in the detailed application of it. "Procksch divides Gen. 3.1–19 into 32 metrical units, all seven-stress lines: Sievers divides the same passage into 33 metrical units, of which 27 are seven-stress lines, the others examples of various rhythms. Considerably less than half of Procksch's 'sevens' are identical with Sievers' 'sevens:' to be exact, 12 of Procksch's lines are identical with Sievers', and 20 are not. Even more remarkable is the difference in 29.2–14a. Here both Procksch and Sievers agree that we have a continuous use of 'sevens' throughout the passage; nevertheless not a single one of Procksch's first fifteen lines is identical with one of Sievers'."

---

[27] For an able exposition and critique of the various theories up to 1905 see William Henry Cobb, *A Criticism of Systems of Hebrew Metre*, Oxford 1905.

Altogether there is too much tampering with the masoretic text, too much pruning and stretching in the name of an imaginary metre. As was pointed out by J. Ecker in 1883, Bickell's attempt to apply his metrical theory to the Book of Psalms involved either an excision or an addition of almost 2600 syllables and 3811 vocalic changes! And Rothstein's experiment with the same book in his *Grundzüge des hebräischen Rhythmus* (Leipzig 1909) has proved even more disastrous to the masoretic text, for through his pet theory of a uniform metre he was compelled to force every poetical sentence into a metrical strait-jacket, cutting out everything that did not suit his preconceived scheme. His principle that "all verses of a lyric poem forming a unit in itself follow the same rhythmic scheme" necessarily opened the flood-gate of arbitrary emendation and threw the whole text of the Bible into a state of unstable equilibrium. Sievers' anapaestic system, which, unlike other metrical systems, is applied also to prosaic books of the Bible, such as the books of Genesis and Samuel, likewise depends on numerous vocalic and consonantal changes in the biblical text. The commentators who follow these idiosyncracies juggle with the text and doctor it so that it would fit the desired metrical Procrustes' bed. Thus Duhm and Marti in their commentaries often assume that a long line between short lines, or vice versa, disturbs the metre, and so must be pruned or stretched. They never stop to consider whether such an unbalanced effect was not originally intended by the biblical author, who apparently never meant to be uniform in his lines. It is quite possible and likely that Hebrew poets mingled not only distichs of different types, but with these also entirely unrhythmical periods, an analogy of which may be found in Babylonian, according to Prof. Langdon who asserts that "Babylonian poets felt themselves at liberty to insert prose lines at any juncture" in a poem.[29] In his attempt to obtain a uniform meter Duhm emends even perfectly clear lines which owing to their lucid diction and transparent parallelism no one ever questioned before. Take an innocent phrase like Is. 13.11b והשבתי גאון זדים וגאות עריצים אשפיל, "And I will cause the arrogancy of the proud to cease, and will lay low the haughtiness of the tyrants," which may be called a 3.3 distich: because the distich preceding it is in a 3:2 arrangement Duhm eliminates the parallelistically necessary word אשפיל. Duhm is even more violent in his commentary on Jeremiah, where he assumes uniformity of distich and strophe not only in a single section or chapter but also throughout the entire book. Prepossessed with Budde's Kinah meter he insists on applying it to all the compositions of Jeremiah, pruning and stretching verses at will, as if he were rewriting the Book of Jeremiah. Dr. Briggs in his commentary on the Psalms emended the text in such a way that most of the Psalms divide into exactly equal strophes, each containing exactly the same number of lines, distichs, or tristichs as the case may be. Similarly Gunkel in his commentary on Psalms arranges his lines in strictly measured and equally balanced stichoi, questioning everything that does not fall into this uniform scheme. Sellin, owing to the exigencies of his metrical scheme, inserts an unnecessary and impossible הצאן in Joel 1.19a, reading אליך יהוה הצאן יקראו; similarly in Am. 8.13 he inserts a fancied הָאֲמִצִּים between והבחורים and בצמא. There is hardly a page in the *Duodekaprofeton* which escapes his scalpel owing to his metrical device. To what fanciful theories we are treated may be seen from a book published recently by Ignaz Gábor, entitled *Der hebräische Urrhythmus* (Giessen 1919), in which the author compares Hebrew poetry with primitive Latin and German poetry and consequently maintains that the alliterating syllables in Hebrew verses must have been originally the bearers of the accent, hence in ancient times the accent in Hebrew must have been on the initial rather than the ultimate syllable. All of which is done in an off-hand manner, without any regard to Semitic languages and literatures which in such matters ought to have their say.

---

[28] *The Forms of Hebrew Poetry*, London 1915, p. 204, n. 2.

---

[29] *Proceedings of the Society of Biblical Archaeology*, XXXIV (1912), 77, n. 32.

The chief fault of the metrical theorists lies in the fact that they cut the text to their own measure instead of forming their measure to the text. They forget the wise Oriental maxim: The mountain will not go to Mahomet; let Mahomet go to the mountain. Any metrical system that lays claim to recognition must be adapted to the text which it aims to elucidate, and never should the text be rearranged to fit a hypothetical metre. The fact is, as was pointed out time and again by Willy Staerk and others, recently also by Torrey in his *Second Isaiah*, that no rigid and uniform metrical scheme will solve the problem of Hebrew prosody and biblical metrics. Gray is quite emphatic "that the laws of Hebrew poetry did not require either that a single type of distich must be used throughout the same poem, or that all poems must be divded into equal strophes: and that as a matter of fact some Hebrew poems are perfectly, or nearly consistent in the use of a single type of distich and strophes of the same length, and that others are not."[30] To-day we are as far from a satisfactory solution as ever, and the only safe anchor in a sea of doubt is the well-established *parallelismus membrorum*. Beyond this we are groping in the dark as in the days of Lowth. As Torrey puts it quite lucidly and succinctly: "The whole subject of Hebrew metrics is in its infancy, and any present treatment of it is necessarily crude and imperfect. The principal rules and conventions of Hebrew prosody are doubtless as old as the literary language, and are determined to some extent by details of vocalization, word-accent, elision, and the like, which are more or less obscured in the system of cantillation represented by our masoretic pointing. The poets, masters of their art, were provided with long-familiar rules of rhetoric and composition—to say nothing of musical setting—of which the modern student is as yet unaware, though long-continued study will doubtless bring many of them to light. The technique of a national poetry, developed by a literary people, is never simple, however ancient it may be. Some conclusions which seem to us highly probable may well be mistaken, and we must constantly bear this in mind in presuming to criticise either verbal details or principles of structure."[31]

IV

Unlike amendments from versions and conjectural emendation, the comparative method of explaining difficult passages and words in the Bible from cognate languages has furnished so far the most positive results of textual criticism. Not that there is not a good deal of nonsense written in the name of the Semitic languages by both specialists and sciolists—every one perusing assiduously the Semitic journals and periodicals will easily be convinced of that—but there is less chaff and more wheat here than in any other critical method dealt with above, as in the nature of things this should be so. This comparative method is not new. It was used by Hebrew grammarians and lexicographers at the very dawn of Hebrew philology, notably Judah ben Koreish[32] and Ibn Barun.[33] But it never experienced considerable growth before Schultens, who in his *Dissertatio academica ad varia Veteris Testamenti loca ex dialectis vindicata et illustrata* (1743) and particularly in his commentaries on the Books of Proverbs and Job made excellent contributions to biblical philology through a comparison with Arabic. In this work Schultens was followed by Umbreit, Hitzig, Ewald, Gesenius, Delitzsch, and others, who based their exegetical labors chiefly on the approved method of comparative philology. Unfortunately, the great upward swing of the literary-historical method or Higher Criticism from the middle of the nineteenth century and onward gave a quietus to the comparative method to the detriment of biblical exegesis. Yet there were a few biblical scholars left who devoted their time and energy to this unpopular study, gaining thereby splendid results. I refer particularly to Nöldeke, Barth, Perles and Ehrlich, who did valiant work in the interpretation of the Bible with the help of cognate languages. Felix Perles more than anybody else has demonstrated in his *Analekten zur Textkritik des Alten Testaments* (München 1895—Leipzig, 1922) how much may be gained in this safe and conservative way for an understanding of the Scriptures; while Ehrlich in his *Randglossen*[34] has reared a monument of biblical exegesis more enduring than brass, for which future generations will be beholden to him. These men approached the Bible with due reverence and meet sympathy, and in their quiet search for truth endeavored to understand the text as it is, realizing that the only way to explain a biblical text is by endeavoring to grasp its verbiage and diction as transmitted to us faithfully through centuries and aeons and not by assuming corruption offhand and hastily substituting something else in its stead. They firmly believed that before emending a biblical text one should ransack the entire range of Semitic languages in a search for hidden roots and unknown vocables which may fit a particular case and serve to explain a long standing difficulty. Indeed, one has all the Semitic languages and their dialects to draw upon, especially the extremely rich Arabic tongue with its plethora of nuances unrivalled in any other tongue; also other Oriental languages, like Egyptian and Sumerian, which sometimes furnish equivalents to the Hebrew and thus help illumine some difficult words and passages. I emphasize Arabic because some parts of the Bible, like the Book of Job, cannot be interpreted adequately except with the aid of the Arabic language and literature. Nor are the latter dispensable in the other poetical books of the Bible, including poetical portions in prosaic books; and in spite of Friedrich Delitzsch's contention against the immoderate use of Arabic in Gesenius-Buhl's *Hebräisches und Aramäisches Handwörterbuch*[35] it must be admitted that Arabic is the main prop of Hebrew philology and the chiefest source of elucidation of difficult passages in the Hebrew Scriptures.

---

[30] *The Forms of Hebrew Poetry*, p. 224.

[31] *The Second Isaiah*, p. 151.

---

[32] Comp. his *Epistola de studii Targum utilitate*, ed. Bargès and Goldberg Paris, 1857.

[33] See Paul Kokowzoff, *Kniga Sravneniyya Yevreiskago Yazika s Arabskim Abu Ibragima Ibn Baruna*, St. Petersburg 1893.

[34] *Randglossen zur hebräischen Bibel*, Textkritisches, Sprachliches und Sachliches von Arnold B. Ehrlich, 7 vols. Leipzig 1908–1914. An extended version of his earlier מקרא כפשוטו in 3 volumes, Leipzig 1899–1901.

Let me adduce a few examples of how gracefully and tastefully long standing biblical difficulties, veritable cruces interpretum, are sometimes solved by this method. Ps. 74.14 אתה רצצת ראשי לויתן תתננו מאכל לעם לציים is read by Immanuel Löw very ingeniously לעמלצי ים "to the sharks or sea-dogs.[36]" Job. 29.24 ואור פני לא יפילון is construed by David Yellin[37] as יאפילון, which yields excellent sense and is perfectly legitimate because it is based on the common phenomenon of syncope or elision of certain gutturals and does not involve any consonantal change in the masoretic text. Cant. 7.6 מלך אסור ברהטים is construed by the late Eliezer Ben-Yehuda[38] as מַלֵּךְ or מִלֵּךְ meaning "thy tresses," this meaning being derived from the conception of motion implied in the root מלל both in biblical and mishnic Hebrew.[39]

---

[35] *Philologische Forderungen an die hebräische Lexicographie*, Leipzig 1917. p. 17ff.

[36] Quoted in Gunkel's commentary on Psalms *ad loc.*

[37] חקרי־מקרא. באורים חדשים במקראות מאת דוד ילין. א: איוב, Jerusalem 1927.

[38] *Journal of the American Oriental Society*, XXXVII (1917), 324ff.

[39] This in itself is an ingenious suggestion, though he failed to explain רהטים satisfactorily.

Of recent years Israel Eitan of Pittsburg has been pursuing this fruitful method in his scholarly treatise *A Contribution to Biblical Lexicography* (New York 1924) and in a number of articles in various Semitic journals. His praiseworthy procedure consists in taking the consonantal masoretic text as it is, with all its apparent anomalies and seeming indiscrepancies, and endeavoring to explain these from Semitic grammar and lexicon, of which he seems to be a master. Whether his etymologizing is right or wrong it is not always easy to tell—and I am inclined to think that in some cases he is quite wrong—but the mere fact of his tireless effort in this direction deserves commendation and encouragement on the part of every conservative scholar. Thus Ob. 1.3 איך נחפשו עשו נבעו מצפוניו he renders in perfect parallel "how are his concealed things searched out! how are his hidden places sought out!," deriving the puzzling עֵשָׂו from an Arabic root غَشِيَ "cover, envelop;" Job. 20.29 זה חלק אדם־רשע מאלהים ונחלת אמרו מאל he manages to derive the difficult אמרו from the Arabic امرؤ meaning "a violent man, an oppressor," which is parallel to אדם רשע; 31.23 כִּי פַחַד אֵלַי אֵיד אֵל he reads very ingeniously כי פחד אֵל יָאִיד אֵלַי and translates "for the terror of God was mighty upon me," deriving יאיד from the Arabic verb آدَ (root ايد) meaning "to be strong and powerful," and so on. Another young scholar pursuing the same path is Samuel Grünberg of Berlin, who in his *Exegetische Beiträge* (Berlin 1924) and elsewhere has endeavored to explain satisfactorily some very difficult passages in the Bible from Arabic and Aramaic without recourse to any other changes except metathesis and shifting of vowels. Thus Job 18.2 עד אנה תשימון קנצי למלין he renders sensibly "how long will you contradict the words?", deriving קנץ from Arabic نَقَضَ "contradict," نَقْضٌ "contradiction;" 19.3. זה עשר פעמים תכלימוני לא תבושו תהכרו לי he translates very appropriately "these ten times have you reproached me, you are not ashamed to blame me," deriving תהכרו from the Arabic ركا "speak ill of anyone;" 38.36 מי שת בטחות חכמה או מי נתן לשכוי בינה he is able to obtain from classical Arabic the meaning of some species of cock for טחות (طحى = *gallus gallinaceus*), which forms an excellent parallel to שכוי, and so on.

It seems to me that conservative efforts like these rather than problematic conjectural emendations constitute Ariadne's thread promising to lead us out of the labyrinth of biblical enigmas, and, unless I am mistaken, the pendulum of biblical criticism, which is never altogether stable but veering from one extreme to another according to time and place, is now pointing once more in the direction of comparative philology, which after all is the safest and most tangible path to tread upon. Let us hope that this end will be consummated in the near future to the increased glory of biblical exegesis.

AL-QIRQISĀNĪ'S ACCOUNT OF THE JEWISH SECTS AND CHRISTIANITY

By LEON NEMOY, Yale University Library, New Haven, Conn.

OUT of the work-rooms of the State Public Library at St. Petersburg the great master Harkavy published in 1894 the first introductory part of a large legal work entitled "Book of Lights and Watch-Towers" by the Karaite scholar known as al-Qirqisānī. Harkavy was himself the first to state that the newly found work is one of the earliest and most trustworthy of all the accounts of the Jewish sects of Saadiah's time; we might safely add: also the most detailed, accurate, and as far as it was possible in the tenth century, the most impartial.

At the outset, this edition was doomed to ill luck; Harkavy's immensely valuable introduction and notes were written in Russian, and the reviews published in some periodicals devoted to Jewish science were, therefore, limited to the Arabic text. Poznanski, who published another fragment of al-Qirqisānī's work in the Kohut Semitic studies, and who prepared a masterly report on the al-Qirqisānī-manuscripts in the British Museum for the *Festschrift Steinschneider*, touched upon Harkavy's publication only en passant. In various subsequent works minor references to Harkavy's publication have been made from time to time, but no full translation of it has, as far as I know, ever been made.

My interest in al-Qirqisānī's work was originally purely linguistical and was due to the fact that it is one of the earliest specimens of the Eastern branch of the Judaeo-Arabic dialect, as distinguished from the Western branch exhibited in the works of Maimonides (who is, of course, two centuries later than al-Qirqisānī) and characterized by strong influences of the Egyptian and Maghrebine vernaculars of the Moslem-Arabic. But in the course of my study I had, volens nolens, to refer every once in a while to the contemporary Jewish sources, as well as to make excursuses into the field of Jewish law and ritual, especially in those chapters of the Book of Lights where al-Qirqisānī criticises the Rabbanite law and lists a series of differences between the Palestinian and the Babylonian rituals.

Nevertheless, the present translation lays claim to little more than a more or less faithful rendering of the Arabic text. In my notes I have paid special attention to the philological aspect of al-Qirqisānī's language and also to matters of a purely Moslem nature. As far as my knowledge of Jewish literature goes, I have given references to Talmudic, Midrashic, and later sources, and have tried to explain the legal part of the text to the best of my understanding. It goes without saying that the references can be multiplied a thousandfold; a comparative study of the Book of Lights and the later Karaite literature is also a desideratum; but for this I have neither the necessary erudition nor space.[1]

The chief sources for the bio-bibliography of al-Qirqisānī are the following:

M. Steinschneider. *Die hebr. Uebersetzungen des Mittelalters*, 1893, paragraphs 264–266; corrected and supplemented in his *Die arabische Literatur der Juden*, Frankfurt am Main, 1902, paragraph 43.

S. Poznanski. Die Qirqisānī-Handschriften im British Museum, in *Festschrift Steinschneider*, 1896, pp. 195ff.

W. Bacher. Qirqisani, the Karaite, and his work on Jewish sects, in the *Jewish Quarterly Review*, vol. 7, 1894, pp. 687ff. (a review of Harkavy's edition; Bacher could not use the Russian part of it).

H. Hirschfeld. *Qirqisani studies*, London, 1919 (Jews' College Publications, 6).

---

[1] My thanks are due to Professor Charles C. Torrey, of Yale University, for valuable help in the interpretation of the Arabic text; to my friends, Dr. Joseph Schwartz and Rabbi Philip Grossman, for several valuable suggestions concerning matters of ritual; and to my fatherly friend, Rabbi Dr. Sidney S. Tedesche, of New York, without whose kind encouragement this work would never have been completed. Prof. J. Z. Lauterbach was kind enough to make some suggestions and supply certain references. These are designated in the footnotes with [L]. (In the transcriptions ḳ represents Hebrew ק and q Arabic ق—Ed.)

The Book of Lights and Watch-Towers (in Arabic: כתאב אלאנואר ואלמראקב) is divided into 13 parts; of these the following have been published:

> The first introductory part, by Harkavy, in the *Memoirs of the Oriental Department of the Imperial Russian Archeological Society*, vol. 8, fasc. ¾, St.-Petersburg, 1894, pp. 247ff.
>
> The sixteenth chapter of the third part (on the question whether Jesus was divine), by Hartwig Hirschfeld in his *Arabic Chrestomathy in Hebrew characters*, London, 1892, pp. 116ff.
>
> The seventeenth and eighteenth chapters of the third part (on metempsychosis) and the thirty-fifth chapter of the fifth part (on the question whether books written in characters other than Hebrew may be read on the Sabbath), by Poznanski in the *Kohut Semitic Studies*, pp. 435ff.

The following is a translation of the texts edited by Harkavy and Hirschfeld; for the sake of convenience, the chapter published by Hirschfeld has been placed after the eighth chapter of Harkavy's text.

An edition, with translation and commentary, of the fifth part of the "Book of Lights" is now in course of preparation by me, jointly with Dr. Joseph Schwartz, of Yale University.

CHAPTER I

FOREWORD

. . . [(The Rabbanites say:) "I do not recognize either Anan or] Benjamin (al-Nahāwandī)[2] or any other man of this class since they are dissenters who have gone over to the Gentiles.[3] But I do recognize the School of Hillel and the School of Shammai, for they are the basis (of true religion), inasmuch as they adhere closely to (the books of) prophecy and have received (their teaching) directly from the prophets; they are the foremost authority in the (Hebrew) language, and they are the prevailing majority." If someone should say that this is a better way than the way of those who consider Anan as one of the Rabbanites, and his teaching as essentially identical with theirs, he, too, is in the wrong. The true procedure should be this: laws should be made along the lines of research and speculation only; whatever is proved by research and speculation to be necessary and logical should be accepted as dogma, no matter who adheres to it, be it the Rabbanites, or Anan, or anyone else. Yea, if scholars engaged in research and speculation should arrive at some new doctrine which none (of the former authorities) had heretofore professed, its acceptance should be obligatory, inasmuch as it is (logically) correct and unassailable. There are other so-called Karaites, for example, those of Persia, especially those of (the city of) Tustar,[4] who, notwithstanding their assertion that they are in favor of speculation, revile those who engage in rational speculation, i. e. in some of the secular sciences, especially dialectics and philosophy. What makes them averse to this (speculative method) is this: first, they are too lazy to learn all about this matter, and it is also too difficult (for their minds); therefore, they seek to be relieved from this fatiguing pursuit. Secondly, some of them erroneously think that rational speculation does harm to him who engages in it by leading him to heresy; in fact, they assert that they have seen some men who have been engaged in this pursuit and have become heretics. This opinion of theirs, however, is the very cause[5] of (all heretical) doubts and suspicions, inasmuch as it makes the listener believe that rationalism is averse to religion and is directly opposed to it; if this is so, then religion is assailable (as something irrational), but this is utterly absurd. They certainly ought, therefore, if they would only try to be just, to refrain from accusing rationalism of being the cause of heresy for the mere reason that some men who have been engaged in speculation went astray (in their faith), since a great many scholars have been pursuing the same method (of thinking) and yet have not become heretics, on the contrary, it only strengthened their faith. Neither should they assert that renunciation of speculation is the cause of added strength of faith, inasmuch as there are a great many people who have never done any speculation by means of (pure) reason and have no idea of it, and yet they are dissenters and believers in all sorts of heresies. We shall show further on the absurdity of the views of these people, and we also shall prove that intellect is the foundation upon which every doctrine should be built, and that all knowledge should be derived by means of reason only.

---

[2] See below, Chapter XIV.

[3] אד̇ הם כ̇וארג̇ כאנו באלאמם the author had in mind the Moslem Khawārij; there is no need to emend באלאמה̈, as Bacher does.

---

[4] Tustar, or, as the Persians pronounced the word, Shustar, was the capital of Khuzistan; cf. *Yāqūt, Mu'jam al-buldān*, ed. Wüstenfeld, I, 847–848.

[5] Accepting Baron Rosen's emendation סבב.

I do not think there is any devotee of speculation more sincere than Daniel al-Qūmisī, or one more conscientious in giving (the method of) speculation its just due. Whatever he derives by means of speculation, or is led to by research or (logical) reasoning, he accepts and recognizes. In fact, it is his habit to write to his pupils who had copied his writings (for their personal use) and to inform them of everything that recently appeared to him to be true, in case it is contrary to what he had formerly written down in his works, with the request that they should insert it into (their copies of) his works. Nevertheless, he is dissatisfied with rationalism to such an extent that he reviles both it and its devotees many times in his works. Although he is an excellent scholar in the Scripture and in philology, there is one thing which greatly injures his prestige among some of our coreligionists, namely his dislike of the sect of Anan, whom he assails very strongly. At first he used to esteem Anan very highly; he mentioned him in many places in his works with the epithet "Chief of the learned men;"[6] subsequently, however, he began calling him "Chief of the fools."[7] For a man of such learning and piety this is certainly very shameful. Another great misfortune which handicaps our coreligionists is their opposition to one another, and the dislike and hatred they bear towards each other, although it is only the desire and lust for power which incites them to this.

The above mentioned considerations prompted me to compose this work. I desire to record in it some of the opinions of (various) scholars concerning the laws (of the Jewish religion) and the reasons they give (for their opinions). Some of them are already included in the works of my predecessors; some are such as I have heard in several assemblies (of scholars) which I personally attended; and some have been reported to me, namely such as I have not heard myself (from their authors). Such questions and answers as I think to be right I shall designate as such; likewise I shall disapprove of such as I believe to be wrong. Where in my opinion the matter is doubtful I shall leave it as it is; perhaps someone else, upon further examination, will find out more than I could. I shall try to make my account neither too long nor too short, neither too detailed for the scholar, nor too concise for the student. Upon the Most Exalted Creator I rely for help in this and in all other praiseworthy undertakings; to Him do I direct my humble prayer for all the things which his servant and beloved friend David—to whom be peace—prayed for when he said [Psalms 119.18f.]: "Open my eyes so that I may see the wonders of Thy Torah; a stranger am I in this world, do not conceal Thy precepts from me."

---

[6] ראש המשכילים.

[7] ראש הכסילים.

Chapter II

CHRONOLOGICAL ACCOUNT OF THE JEWISH SECTS

1] Jeroboam was the first who introduced differences in religion and sowed rebellion in Israel after the establishment of the kingdom[8] by making changes and alterations in the laws, as the Scripture says about him in more than one place [1 Kings 14.16, etc.]: "He who made Israel sin," referring to the "two golden calves" which he introduced; also his speech to the people [ibid., 12.28]: "Enough of your going up to Jerusalem!", etc. What prompted him to do this was, according to the Scripture, his wish to persist and remain in rebellion . . . [because he feared] lest the people should conceive a longing[9] for their (legitimate) king of the seed of David, should they continue going up to

---

[8] The lack of the modifying pronoun ("his") with the word "kingdom" shows that this is merely a general statement, i. e., after Israel had become a monarchy, in other words, after Saul.

[9] Read יתוק.

Jerusalem; in such a case the kingdom might slip out of his hands, as the Scripture says [ibid., 12.26–28]: "And Jeroboam said to himself: 'Now the kingdom may return to the house of David; if this people will go up to offer sacrifices in the house of God in Jerusalem, the heart of this people will turn back to its rulers, to Rehoboam the king of Judah.' And the king took counsel and made two [golden calves] and said to them: 'Enough of your going up to Jerusalem! these are thy gods who have brought thee out of Egypt!' "

Some of our coreligionists have said that he introduced these two calves only as substitutes for the two Cherubs; this suggestion is not improbable, because his only intention in introducing these differences was to imitate that which had already been enjoined (in the Torah); this is proved by the fact that he substituted for the (Aaronite) priests men from the common people, as it is said [ibid., 12.31]: "And he appointed priests from the common people, who were not from the children of Levi;" likewise, he instituted a pilgrimage in the eighth month, instead of the seventh, as was the custom in the temple (of Jerusalem), for it is said [ibid., 12.32]: "And Jeroboam established a feast in the eighth month, on the fifteenth day of the month, like the feast that was observed in Judah." It is possible that he was making the people believe that the year was a leap-year, as some of our coreligionists have suggested.[10]

This is what the Scripture reports concerning the differences and innovations introduced by Jeroboam. It is possible that he did differ in many other laws, changing and altering them, but the Scriptural account is limited to the enumeration of the most important and grievous differences. But the fact is that Jeroboam did not deny the Glorious Creator nor abrogate Him, nor did he worship idols, as some people imagine. This is evident for two reasons: First, as we have shown above, he (invariably) issued new regulations instead of (such of) those already in the Scripture (as he wished to change); had he renounced the entire faith, he would have abolished the whole code of law, having no need to change (some of) it; nothing else but his fear lest the kingdom should be lost to him was, as we have shown, the (real) cause of his innovations and alterations. The second reason proving that he had neither renounced the faith nor worshipped idols, is (the following): we read that Jehu destroyed the idols and killed their Israelite worshippers; as it is said about him [2 Kings 10.28]: "And Jehu destroyed the Baal from among Israel;" and yet later on the Scripture says that he was persisting in the sins of Jeroboam, as it is said [ibid. 10.24]: "But as to the sins of Jeroboam ben Nebat that he made the Israelites sin, Jehu did not desist from them." This is the clearest proof that he[11] introduced the two calves not in order to worship them as heathen people worship idols.[12]

---

[10] Al-Qirqisānī means to say that Jeroboam evidently did not break with the principles of the faith, but introduced only minor changes in order to make the Ephraimite church independent of the Judean, although by no means less orthodox.

If, however, someone should say: "But does not the Scripture say that he used to sacrifice and burn incense before them, since it says [1 Kings 12.32]: 'To sacrifice to the calves that he made?' And does it not say in another place: 'To burn incense before the calves that [he made]' . . .?"[13]

. . . "He will be brought to Assyria" [Hos. 10.6], etc.: we learn that that which is said about Israel in the captivity [2 Kings 17.22]: "And the children of Israel walked in all the sins that Jeroboam had committed" means the (very same) licentious customs which he had invented and introduced in place of the true laws. Afterwards the people of Judah followed them in this deviation, as it is said [ibid. 17.19]: "And Judah did also not observe;" and [ibid., ibid.]: "And they walked in all the sins that Israel had sinned." Thus they all went into exile persisting in these customs, and they spread all over the world transmitting them (generation to generation) down to the present time.

Perchance someone reading this paragraph will disapprove of the verbosity that appears in it, since my aim in this work is to report (only) the cause of the change in the (true) laws. Let him, then, to whom this occurs, know that I have done it only for a reason which will not be hidden from him who earnestly seeks to examine the matter.

---

[11] i. e. Jeroboam.

[12] Al-Qirqisānī means to say that even after having destroyed the Baal Jehu is charged with imitating the evil ways of Jeroboam,—a clear indication that these "evil ways" were not Baal-worship.

[13] There is no such passage in the Old Testament; al-Qirqisānī seems to have combined the above quotation from 1 Kings 12.32 with the word להקטיר which occurs in the following verse.

2] Next after Jeroboam came the Samaritans, whom the (Jewish) people call "Cutheans," and of whom it is said [2 Kings 17.24]: "And the king of Assyria brought from Babylon and Cutha." It is they of whom it is said [Ezra 4.1] that they are "The enemies of Judah and Benjamin," for the Scripture tells us that they approached the chieftains of the children of Israel at the time the latter were building the second Temple; as it is said concerning them [Ezra 4.2]: "And they approached Zerubbabel and the chiefs of the families and said to them: 'Let us build with you!'"; and they said (also) [ibid., ibid.]: "And to Him do we sacrifice from the days of Esarhaddon king of Assyria." It is said that down to the present time they mention[14] Sanballat the Horonite who had been their chief.

3] After the Samaritans appeared the chiefs of the Assembly, i. e., the (chiefs of the) Rabbanites, namely at the (time of the) second Temple. The first of them who is mentioned is Simeon, whom they call Simeon the Righteous. They say that he was one of the epigones of the Great Assembly.[15] As for those whom they call "fellows of the Great Assembly," they say that they were at the time of Ezra and Nehemiah.[16] The Rabbanites acknowledged the authority of (the members of) the Assembly[17] merely because they, too, were following the licentious customs inherited from Jeroboam. Therefore, they confirmed and approved these customs, defended them by argumentation, and composed the Mishnah and other books in explanation of them. When occasionally one or another (member) indicated the true meaning of some law they removed him and persecuted him. This was the case with Gamaliel who fixed (the time of) feasts by the appearance of the new moon;[18] likewise with Eliezer ben Hyrcanus who disagreed with them in the question whether vessels the construction of which has not been completed should be considered unclean; they excommunicated him and kept away from him notwithstanding his display of miraculous proofs of the correctness of his opinion and the direct testimony of God concerning this (question). God forbid that we should agree with their opinion about this matter; it is only they who profess to think so. We shall mention (later) the whole story as they relate it in the Talmud.[19]

---

[14] In their prayers?

[15] A literal translation of Ab. 1, 2.

[16] Sic!

[17] ראס, probably weakened in the colloquial pronunciation to ראס or even ראס; a teshdid, if preserved, would turn the word into רוס.

4] After the Rabbanites appeared the Sadducees; their leaders were Zadok and Boethus. They were, according to the Rabbanites, pupils of Antigonus who succeeded Simeon the Righteous and received instruction[20] from him. Zadok was the first who exposed the Rabbanites and disagreed with them; he discovered part of the truth and wrote books in which he strongly rebuked and attacked them. He did not adduce any proofs for anything he said, but limited himself to mere statements;[21] excepting one thing, namely the prohibition of (marrying) the daughter of the brother and the daughter of the sister, which he inferred by the analogy of the paternal and maternal aunts.[22] As for Boethus, he used to say that the feast of Pentecost must fall on Sunday[23] only, which is also the opinion of the Ananites and of all the Karaites.

5] Thereupon appeared the teaching of a sect called Magharians; they were called so because their (sacred) books were found in a cave. One of them is the Alexandrian[24] whose book is famous and (widely) known; it is the most important of the books of the Magharians. Next to it (in importance) is a small booklet[25] entitled "The Book of Yaddua,"[26] also a fine work. As for the rest of the Magharian books, most of them are of no value and resemble mere tales.

---

[18] Qirqisānī refers here to the deposition of R. Gamaliel reported in b. Ber. 27b. He erroneously implies that the reason for the removal of Gamaliel from office was because he fixed the calendar by observation, a method followed by the Karaites [L].

[19] Cf. B. M. 59b [L].

[20] אכ̇ד̇א refers to Antigonus and is, therefore, to be pointed אכ̇ד̇א forming a continuation of כאן בעקב; the MS. B which has אכ̇ד̇ו evidently took the word as referring to Zadok and Boethus, but this is impossible.

[21] ואנמא קאל ד̇לך עלי ג̇הה̈ אלכ̇בר.

[22] Does he refer to the Zadokite Fragment (ed. Schechter, Cambridge, 1910, p. 5)? [L].

[23] Cf. b. Ḥag. 17a and Men. 65a [L].

6] Next appeared Yeshua, of whom the Rabbanites say that he is (the same person as) "The Son of Pandera;"[27] he is known as Jesus son of Mary.[28] He lived at the time of Joshua ben Peraḥiah,[29] and it is said that Joshua was his uncle. This happened at the time of (the) Caesar, the king of Rome,[30] i. e. at (the time of) the second Temple. The Rabbanites plotted against him until they killed him and crucified him.[31]

7] It is said that there is on (the shores of) the Nile of Egypt, twenty parasangs from the town of Fustat, a sect called Qara'ians. They are called so because they use vessels of gourds[32] and of nothing else. Some theologians say that they claim to be descendants of Johanan ben Korah.[33]

---

[24] Harkavy thinks that this is Philo, and Bacher accepts this identification. But Philo wrote more than one book, and his works were hardly "famous and widely known" among the Arabic speaking Jews in Western Persia; we have nothing to show that an Arabic translation of any of Philo's works was ever made.

[25] כתָיב צגיר.

[26] i. e., either "The Book of (a man by the name of) Yaddua," or "The Book of the Known," or, by a figure of speech widely used in Hebrew, "The Book of the Unknown;" I think the latter meaning is the most probable.

[27] Cf. Tos. Ḥul. 222, Sanh. 67a and Shab. 104b [L]. The true meaning of this name is as yet subject to controversy.

[28] The Arabic form is 'Īsā ibn Maryam.

[29] Cf. Sota 47a and Sanh. 107b in uncensored editions [L].

[30] The Arabic form is Rūm; this is, strictly speaking, the name for the Byzantine empire.

[31] Sic! (קתלוה וצלבוה).

[32] Arabic קרע (*qar'*).

[33] Probably the Jewish general in the retinue of the governor Gedaliah ben Ahikam (Jer. 40.8). Harkavy (p. 262, note 3) brings a quotation from the dictionary of the Karaite Daūd al-Fāsī, to the same effect: "Down to the present time the people who follow the teaching of Johanan ben Korah are called Qara'ians."

8] Thereupon the Rabbanites broke up into two parties, the School of Hillel and the School of Shammai. The people of Babylonia accepted the system of the School of Hillel, while the people of Palestine accepted that of the School of Shammai. Hillel and Shammai received (instruction) from Shemaiah and Abtalion. The controversy between the School of Hillel and the School of Shammai took place on the third of Adar, and several people from both parties were killed.[34]

(9) After the above-mentioned (sects) appeared Obadiah, known as Abū ʿĪsā al-Iṣfahānī. He pretended to be a prophet. This happened at the time of (the caliph) ʿAbd al-Malik ibn Marwān.[35] It is said that he was the leader of a rebellion against the (Moslem) government; some people followed him until he had an army, but he was overcome in battle and killed. Some of his followers say that he was not killed, but entered a hole in a mountain and was never heard of (again). The most wonderful thing about him in the opinion of his followers is the fact that although he was, as they say, an illiterate tailor and could neither write nor read, he produced books and pamphlets without having been instructed by anyone. In Damascus a group of his followers are known as Isunians.

10] After Abū ʿĪsā appeared Yudghān, called by his followers "The Shepherd," meaning that he was the shepherd of the people (of Israel). It is said that he was a pupil of Abū ʿĪsā Obadiah and that he also pretended to be a prophet. His pupils assert that he is the Messiah.

11] After Yudghān appeared the exilarch Anan; this was at the time of (the caliph) Abū Jaʿfar al-Manṣūr.[36] He was the first to explain the whole truth about the laws. He was learned in the doctrines of the Rabbanites, and there was not one among them (who would dare) to make light of his learning. It is said that Hai, the president of the academy,[37] while translating with his father a book of Anan's from the Aramaic[38] into the Hebrew, found among his doctrines nothing of which they could not trace the source in the doctrines of the Rabbanites, with the exception of his opinion concerning the first-born and the difference between the planting of Jews and the planting of Gentiles. They did not know where he took it from, until they found it in the elegies[39] of Yannai.[40] The Rabbanites did all they could to kill him, but God let them not get hold of him.

---

[34] Cf. Yer. (ed. Krotoschin) Shab. 3c. (However the correct meaning of והיו הורגין is "they would have killed" [L]).

[35] A. H. 65–86, i. e., A. D. 685–705.

[36] A. H. 136–158, i. e., A. D. 754–775.

[37] i. e. Hai ben David, the gaon of Pumpedita, 890–897. מת̇יבה̈ is the arabicized form of the Jewish-Aramaic מתיבתא, Hebrew ישיבה.

12] After Anan appeared Ismā'īl al-'Ukbarī; this was at the time of (the caliph) al-Mu'taṣim Billāh.[41] Most of Ismā'īl's sayings resemble the ravings of a madman, and any judicious person who heard him laughed at him. Yet notwithstanding his ignorance he thought very much of himself, for he makes light of Anan and reduces him to nothing. It is said that when about to die he ordered his followers to write upon his tomb "The chariot of Israel and the horsemen thereof."[42]

13] At the time of Ismā'īl al-'Ukbarī lived also Benjamin al-Nahāwandī. He was also learned in the doctrines of the Rabbanites and strong in the Scripture. It is said that he was judge for many years. In much of what he said he struck upon the truth, but in some places (of his works) he did not pursue the (right method of) reasoning,[43] rather deviated from it greatly. What he says indicates that he was strongly in favor of both following the (Holy) texts (literally) and deducing from the (Holy) text or (from) what proceeded (naturally) from reasoning by (building up) two premises and (deriving) a conclusion; (all of) which was (a method) intermediate between (pure) reasoning and (following) the (Holy) text (literally). We shall mention this method in the second part.

14] A younger contemporary of these men was Mūsā al-Za'frānī, known as Abū 'Imrān al-Tiflīsī; he was (a native)

[38] אלארמאני(!).

[39] חזאנה̈; the Moslem-Arabic does not know this meaning.

[40] Yannai, one of the earliest payyetanim and the teacher of the great Eleazar ha-Qalir; he lived in the seventh century. Cf. Mahzor Yannai, ed. by Israel Davidson, 1919.

[41] A. H. 218–227, i. e., A. D. 833–842.

[42] An epithet of the prophet Elijah; cf. 2 Kings 2.12.

[43] Literally: the analogy, or, rule (אלקיאס).

of Bagdad and was called al-Tiflīsī because he emigrated to Tiflis, one of the cities of Armenia, and settled there. Some people accepted his teaching and they believe in it down to the present time.[44] The followers of Ismā'īl al-'Ukbarī say that Abū 'Imrān was a pupil of Ismā'īl's and received (instruction) from him.

15] In Ramla lived Malik al-Ramlī. His followers are known down to the present time as Ramlites, or Malikians.

16] In 'Ukbara, after Ismā'īl, lived Mishawayh al-'Ukbarī. He was very weak in speculation; in addition to that, according to what is said about him, his mind was always wandering; we shall explain it later. His followers in 'Ukbara are known down to the present time by the name of Mishawayhites; there are no scholars or theologians among them.

17] The last one who professed a true doctrine and composed books and was followed by some people, was Daniel al-Damaghānī, known as al-Qūmisī. We have already spoken about him in the first chapter.

These are the more generally known sects, as far as we could procure information about them. As for the Karaites of to-day who belong to sects other than those mentioned above, it is impossible to find two of them agreeing in everything; rather, one differs from the other in one thing, while the other differs from the former in another thing. We shall mention some of these (differences) later. Now we shall proceed to enumerate the differences of each sect.

CHAPTER III

ON THE THINGS IN WHICH THE RABBANITES DIFFER FROM ALL OTHER JEWISH SECTS EXCEPTING THE FEW WHO FOLLOW THEM. (THIS CHAPTER) CONTAINS THINGS IN WHICH THEY CONTRADICT THE PRECEPTS OF THE SCRIPTURE, AND INCLUDES THE REFUTATION OF THEIR DOCTRINES

We begin with these things because, as we have said, the laws in which they differ (from the Scripture) are the ones inherited from Jeroboam, inasmuch as he was the first to introduce differences in (matters of) religion. We have already mentioned the account of the Scripture about that in which he differed, and we have shown that the people persisted in his practices at the time of the (Babylonian) exile and continued to hold on to them after they were scattered all over the world, and transmitted them one to another down to the present time. These are the licentious practices of the Rabbanites. We shall begin with their idea of the Creator.

---

[44] Probably the earliest historical notice of a large Jewish community in the Caucasus (ca. 900 A. D.).

They attribute to Him (human) likeness and corporeality, and describe Him with most shameful descriptions; (they assert) that He is composed of limbs and has a (definite) measure. They measure each limb of His in parasangs. This is to be found in a book entitled "Shiʿūr qōmāh," meaning "The measure of the stature," i. e., the stature of the Creator. This, as well as other tales and acts, etc., mentioned by them in the Talmud and their other writings, does not suit (even) one of the (earthly) creatures, much less the Creator. We shall mention a great many things of this sort later.

They say that the Torah which is in the hands of the people (of Israel) is not the one brought down by Moses, but is a new one composed by Ezra, for, according to them, the one brought down by Moses perished and was lost and forgotten.[45] This (assertion) is (equivalent to) the abrogation of the entire faith. If the Moslems only knew about this assertion of theirs, they would not need any other thing to reproach us with and use as an argument against us. When occasionally some of the Moslem theologians attack us, saying: "The Torah which you have is not the one Moses had brought down," we declare them to be slanderers and liars, and we assert that they say this merely because they are pressed for an argument and have no other to produce. But if they only knew about this assertion of the Rabbanites—may God forgive them (what they are saying)—they would be greatly relieved by it and would need nothing else (to use against us).[46]

---

[45] This is wrong; it is maintained throughout the Jewish literature that the Pentateuch in its present form was given to Moses on Mount Sinai. As Harkavy points out, al-Qirqisānī's statement is rather a misinterpretation of the passage Suk. 20a: כשנשתכחה תורה מישראל עלה עזרא מבבל ויסדה חזרה ונשתכחה עלה הלל הבבלי ויסדה וכו'. Cf. also Sanh. 21b.

For prayers (consisting of citations) from the book of Psalms they substitute some composed by themselves, contrary to what is enjoined in the Scripture [Ezra 3.10]: "To praise the Lord by the words of His servant David." Yet they say in the beginning of their prayer: "Who chose His servant David and graciously accepted his sacred hymns," etc.[47] Thus they admit by this phrase that the praise and the exaltation and glorification of God must consist of (citations from) the sayings of David. Also, they do not perform it as it should be performed, but merely say it being seated, in the manner of mere reading aloud.[48] We shall complete the argument about this matter in its (special) place.

They forbid touching the ground with the face when bowing down (in prayer). This is contrary to the passage of the Scripture [2 Chron. 7.3]: "And they knelt with their faces to the earth and bowed to the ground."[49] At the end of the prayer they bow to the right and to the left,[50] imitating the way of the Christians; they say that this bowing is (intended) for the two angels in charge of each person, of which one stands to the person's right and the other to his left. More strange than this is that they bow first before these two (angels), and (only) afterwards they bow straight forward before the Creator.

Aside from that, they entreat the angels to forward their prayer to the Creator so that they might let Him hear their entreaty and imploration. This (is contained) in their saying: "The bringers of mercy brought[51] our (imploration for) mercy before the Lord of mercy."[52] They interpret accordingly the saying of Solomon [Eccl. 10.20]: "Even in thy thought do not curse the king,"—they say that the Creator is meant by it,[53] and that the passage [ibid., ibid.]: "Because even a bird may carry the word" means the angels,[54] of whom it is said that they have [Isa. 6.2]: "Six wings everyone," and that the Creator obtains His information[55] (about all that happens in the world) in such a way. But our God is exalted far above this, as He has described Himself in His own words [Jer. 32.27]: "Behold, I am Yahweh, the God of all flesh; can anything be unknown to Me?"; (compare) also the saying of His prophet [ibid., 32.17]: "Nothing is unknown to Thee!" It is He of whom it is said [Dan. 2.22]: "He hath revealed the deep and secret things; He knoweth what is in the darkness." Is it necessary, in the presence of this description of Him, that any word or speech should be forwarded to Him?

---

[46] Apparently, al-Qirqisānī means to say that by making such statements the Rabbanites furnish the Moslem theologians with a powerful weapon for use against the Jews.

[47] אשר בחר בדוד עבדו ורצה בשירי קדשו. Probably a phrase in the prayer-book of some local rite in al-Qirqisānī's time; the prayerbook now in general use does not contain this phrase.

[48] עלי ג̇הה̈ אלקראה̈ ואלד̇כר; does he mean that prayers should always be chanted?

[49] Cf. Meg. 22b, Ber. 34a. The reason for this prohibition may have been the fear lest there be a mosaic image on the floor and it would seem that the worshipper bowed to it [L].

[50] Cf. Yoma 53b [L].

[51] The correct translation is "Ye bringers of mercy O bring, etc." [L].

They allow a person to ask from another a jar of wine or a jar of oil on the Sabbath. This is contained in their saying:[56] "It is allowed to ask from one another jars of wine or oil, only without saying 'Lend me;' likewise, for women to ask one from the other loaves of bread. If one does not trust the other, the other may leave his cloak (as security) and settle the account after the Sabbath." But this means selling and buying on the Sabbath, only by means of a subterfuge, as it is said [Jer. 9.5]: "Fraudulently, they refused to acknowledge Me, saith Yahweh." Also what they say about "mingling"[57] is known and familiar to everybody.

They allow the writing of a letter or two on the Sabbath, provided that it does not make out a complete name or word; e. g., if one would write דן, meaning the name Dan, it would be unlawful, since this is a complete name; but if he would write דנ,

---

[52] In the seliḥah of Eleazar ha-Qalir, cited in Zunz's *Synagogale Poesie*, p. 148.

[53] Cf. Midr. Teh. 7, Buber p. 62 [L].

[54] Cf. Lev. r. 32.2 [L].

[55] יכבר (IV. passive).

[56] Shab. 23.1.

[57] עירוב.

meaning a part[58] of the name Daniel, it would not be unlawful, since he did not write a complete name.[59]

Also, they allow a weaver to interweave (on the Sabbath) a thread or two into a cloth, provided that it does not produce a piece, i. e., a complete portion, of a cloth.[60]

They permit sexual intercourse on the Sabbath,[61] although it has three elements contrary to what we may do on the Sabbath. First, the excitement and the exhaustion which is contrary to [Ex. 20.10]: "Thou shalt not do any work." Second, the contraction of impurity, which is contrary to the holiness to be preserved during the Sabbath. Third, the ejaculation of the sperm, which is contrary to the passage [ibid., 34.21]: "Thou shalt rest from ploughing and harvesting."[62]

They permit these things, although it is clear and evident that they should be prohibited, but prohibit other things for which (common) sense[63] gives evidence contrary to what they say about it. Thus, (they say) that nobody should prostrate himself on the Sabbath, lest he should ask some favor of the Lord. But there is no prayer which they or others pray in which there is no request for favors. And on what (Scriptural) authority should it be allowed to ask a favor of the Lord standing or sitting, and not allowed to ask for it being prostrated? If one is allowed to say in his prayer: "Remember Thy mercy and suppress Thine anger, and abolish pestilence and wrath and the sword from among us and from among all the children of Thy covenant," which is a prayer both for his personal and for common needs, why should he not be permitted to ask his Lord for a particular need of his own?

---

[58] בעץ̇.

[59] Shab. 12.3; the Gemara, ff. 103–105 undertakes a long discussion about this question.

[60] Cf. Shab. 13.1.—(In both cases Qirqisānī confuses פטור with מותר. The rabbis do not allow it. They merely say that one is not subject to punishment for it. There are many instances in the sabbath laws which are פטור ולא מותר [L]).

[61] Ket. 62.

[62] This objection is wholly based on the Arab usage of חרת̇ (literally: ploughing) as a regular technical term for cohabitation.—(Cf. ibn Ezra ad loc. [L]).

[63] אלחס, literally: feeling.

They make a strange assertion in the Mishnah[64] that one who draws near that which Gentiles have sown or planted[65] becomes unclean, because they consider it a work of idolatry, concerning which the Scripture says [Isaiah 30.22]: "Thou shalt scatter them as a menstruous cloth;" this would imply that the eating of it is also forbidden and that the children of Israel, upon entering Syria, did not eat its crops and fruits! What fool[66] will ever believe such a thing?!

Also, they forbid a person to carry his spittle in his mouth for four cubits (of way).[67] I would like to know what about urine and faeces! Is there any custom more foolish than this?!

It is strange that they forbid us to put straw in a sieve on the Sabbath lest crumbs of the straw should fall through the sieve so that it would be as if one has been sifting on the Sabbath.[68] But they allow us to bring in a litter, if a plank in the roof of a house has been broken on the Sabbath, and to place the litter under this plank to support it.[69] Is there a greater contradiction than prohibiting an involuntary thing and allowing one that is manifestly voluntary?

They allow cooking on the Sabbath, provided that the pot (with the food) is prepared before the Sabbath and placed in the oven, so that (the food) is cooked and eaten on the Sabbath.[70]

They require the circumcision of the dead, which is extremely abhorrent to reason.[71]

---

[64] אלהלכה.

[65] The Mishnah ('Ab. Zarah 3.6) speaks here only of trees which are planted by Gentiles in order to make from them asherah's; any general prohibition of every seed of Gentiles, like wheat and rye, is not found here at all.—(Qirqisānī apparently mistook עכו"ם which stands for עבודת כוכבים ומזלות for עובדי כוכבים ומזלות [L]).

[66] Literally, blind-hearted person (עמי אלקלב).

[67] Nothing of this sort is found in the Talmud, though it may very well be some local custom.

[68] Shab. 20.3.

[69] Shab. 23.5.

[70] There has been a great controversy between the schools of Shammai and Hillel in this matter; cf. Shab. 36b ff.

[71] Cf. Tūr Yōreh Dē'āh 263; circumcision is required only in case of a child who died before reaching the age of eight days.

They assert that the laws of uncleanliness are no longer binding upon all who are living in exile; this is contained in their saying: "Since the day when the Temple was destroyed there is neither uncleanliness nor cleanliness." They assert that no uncleanliness can be contracted from a leprous person, and that no purification is necessary after contact with a dead body. In such a way they deny all impurities, because if there is no purification (necessary even) after contact with a dead body, which is the most impure object, then, according to their way of thinking, all of the people are impure at the present time. They pay no attention to any other impure things that they draw near to or touch, because if they do not admit of the possibility of purification from the major impurity, much more so in case of the minor impurities. Nevertheless, they are in constant contact with holy texts and sacred objects, although this is unlawful according to their own laws. As a matter of fact, they have spoken about this question in reply to the above accusation. Namely, they say that they have permitted impure persons to approach holy texts because holy texts are (often) written on impure leather taken from animals slaughtered by Gentiles. But it has been said to them: "Wherefore, then, did you allow holy texts to be written on (leather taken from) animals slaughtered by Gentiles, inasmuch as by such a permission you cause impure and holy to be mixed together?" They replied that they did it only with the purpose of multiplying[72] holy texts among the people; and that if they would allow holy texts to be written on (leather taken from) animals slaughtered by Jews only, there would be hardly found a holy text or a scroll of the Torah, so that reading (of the Torah) would become rare and scarce among the people. Dost thou not perceive this evident lie, inasmuch as we know that in a single city one could find enough leather from animals slaughtered by Jews for all the holy texts and scrolls in the world? It has even been said to them: "Is it not true that among the holy texts there are some that are written on leather taken from animals slaughtered by Jews? Why, then, do you treat them all alike; and why do you not distinguish the one class from the other, and keep away from the clean, since you have not been keeping away from the unclean?"

---

[72] Or: on account of the great number of holy texts in the hands of the people; תכת̇ר can have either an active or a passive meaning.

By disregarding the impurity contracted through contact with a dead body on the supposition that no purification from it is possible at the present time they have fallen into contradiction with themselves also from another aspect. Namely, they forbid the priests to approach the dead and to carry the [biers][73] . . . into the tombs . . . no impurity and no . . . all the (other) people . . .[74] yet (immediately after this) they pray and read in the scrolls (of the Torah) and holy texts, without being deterred from it by (the thought of) the impurity which they have just contracted. Yet what about the special care which is prescribed for the priests in regard to this prohibition? And why should it be necessary (to think) that they must abstain from approaching graves, but not from approaching their dead? If they adduce as an excuse the passage [Lev. 21.2]: "But for his kin," the reply should be (as follows): This permission was given at a time when purification was possible; why, then, did you allow that at the present time, when no purification is possible?

Another strange thing is that they assert that a dead body of a Gentile does not inflict impurity;[75] but this contradicts the statement of the Scripture that the children of Israel were ordered to purify themselves from the impurity of the people of Midian; as it is said [Num. 31.19]: "And do ye abide without the camp seven days." They adduce as a reason for this assertion the saying of the Scripture [ibid., 19.14]: "When a man dieth in a tent;" they say: " 'man' means only a Jew, for it is said [Ezek.

---

[73] The letters preserved read: אלגנא. Harkavy suggests אלנגאסאת, impurities, but this would hardly make good sense. I think it is fairly certain that the word is אלגנאזאת, biers, coffins.

[74] As the context shows, the lacuna contained the statement that priests used to attend the funerals of their relatives, but did not go farther than a certain distance from the tombs.

[75] At any rate, this view is quoted as a personal opinion of Rabbi Simeon ben Yoḥai (Yeb. 61a beginning); legal power is not given to it; besides, not dead bodies, but graves of Gentiles (קברי גוים) are spoken of.

34.31]: "And ye my flock, the flock of my pasture, are men!" Is there any stupidity and foolishness[76] greater than this?!

Likewise, they say that a person cannot become unclean by coming in contact with a broken bone of a dead man, for it is said [Num. 19.16]: "Or a bone of a man." Woe to him who said so! Look (at him)! He does not know that a part of a bone is bone, even if it is only a splinter from it, just as the smallest particle of flesh is flesh.

They say: "A menstruating woman may take care of all the needs of the household;"[77] and they say in the Talmud: "Every work that a wife does for her husband (at other times), she may do while menstruating,"[78] i. e., everything a woman is allowed to do for her husband (at other times) she is also allowed to do while she has her menses, as cooking and baking, approaching clothes and vessels, etc. Then they made an exception for three things which they do not allow her to do, namely, she must not prepare his bed, nor light his lamp, nor fill his glass.[79] Thus, they allow her to cook and bake what he will eat, but do not allow her to light his lamp, in which there is no harm or advantage or impurity to affect a man.[80]

They say with regard to the "Seven which are pure"[81] such things as God had never commanded.

In the question of suppuration[82] they hold the extremely faulty opinion that only the priest can decide in this matter and that a woman having noticed blood, must bring it to him to decide whether it is blood of menses or blood of suppuration.[83]

---

[76] Literally: blindness of heart.

[77] Nid. 10.7.

[78] Ket. 4b beginning.

[79] ibid., ibid.; incorrect, as the forbidden things are: מזיגת הכוס והצעת המטה והרחצת פניו ידיו ורגליו; no prohibition exists in respect to lamps.

[80] Al-Qirqisānī fails to realize that the oil in the lamp is subject to the laws on impurity.

[81] Nid. 66a [L].

[82] Point זִיבוּת.

[83] Sanh. 87a, beginning.—(But the Talmud does not say that only the priest can decide [L]).

They guide themselves by the saying of the Scripture [Deut. 17.8]: "Between blood and blood;" but no person of (common) sense, much less a person of (high) intelligence, would ever doubt that it is merely a shortened expression for "between healthy blood and sickly[84] blood." They say that a suppurating person is not positively suppurating until the pus has been seen (at least) three times,[85] which was never ordered by God.

Likewise, if the impure is mixed with sixty times as much of pure, the pure (according to them) does not become impure and is not to be forbidden. Thus, according to them, if a dead mouse or (a piece of) swine-flesh falls into vinegar or wine of a sixty times larger volume and then is taken out and destroyed, the eating and drinking of that into which it has fallen is not forbidden. On the authority of this saying they eat things decidedly forbidden.

Likewise, (in case of) worms found in fruits, meat and fish, or flies found in vegetables, or similar cases, they allow us (to eat these foods). This is as disgraceful as the above, or even more so.

They allow (the eating of) the fat-tail, although it is defined (in the Scripture) as tallow; also the kidney and the caudate lobe of the liver.[86]

The same applies to their permission of the (eating of the) foetus[87] and their saying that even if it has been ploughing in the field for five years, the slaughtering of its mother makes it clean.[88] According to them, if a sheep or a cow was slaughtered at the time of giving birth, then her belly was cut open and her offspring was taken out of it (alive) and continued to live (even) for a period of five years, this offspring may be freely eaten without being slaughtered (in the prescribed fashion). In such a way they permit seven forbidden things: first, the dead; second, the blood; third, the fat; fourth, the member of the live body; fifth, "it and its young;" sixth, "what is slaughtered by a Gentile;"[89] seventh, the sinew of the thigh-vein.[90]

---

[84] Read סקים.

[85] Zab. 1.1.

[86] זיאדה̈ אלכבד; cf. *Nöldeke Festschrift*, II, p. 761ff.

[87] ג̇רציץ; I could not find this word anywhere else.

[88] Ḥul. 4.5.

They ought to realize that if a sheep or a cow died at the time of giving birth before she gave birth, then her belly was cut open and a living offspring came out and lived a certain time, the eating of it should be forbidden forever, for it is a part of a dead body, and no part of a dead body is allowed to be eaten. Even if the slaughtering of its mother had made it clean and allowable for food, it necessarily follows that the death of its mother must have made it impure and forbidden.

They themselves say a thing which necessarily makes obligatory upon them what we have just said. Namely, they say that if the foetus extended its front or hind paw out of the womb before the slaughtering of its mother and died during the slaughtering of its mother, the outstretched limb is forbidden, i. e., it must be cut away, but all that which is inside (the womb) is permitted and may be eaten, after the projecting limb has been cut away.[91]

Thus, they permit all this, but forbid things which God did not forbid and which are not listed (as forbidden in the Scriptures). Such are their regulations concerning forbidden animals that are recognized by means of an examination of the lungs; also their rules for slaughtering (listed) in the "Rules for slaughtering," which are (as follows): delay, pressing, digging, slipping, and tearing.[92] Thus, they completely contradict (the saying of the Scripture) [Deut. 13.1]: "Thou shalt not add thereto nor diminish from it."

The same applies to their affirmations concerning the purity of meat which is declared to be impure by the Scripture,[93] e. g., in case of wholesale sacrifices at times like when, as the Scripture says [1 Kings 3.4], "A thousand burnt offerings did Solomon offer;" the same in regard to the Passover-sacrifices, etc. Will any sound mind[94] admit that anyone but God is authorized to make that clean, or that the mere fact that those sacrifices are offered under certain circumstances can make them lawful?[95] Will anybody doubt that they have passed most of these laws merely as a means for gain?

---

[89] Al-Qirqisānī possibly has in mind a case when the cow was slaughtered by a Gentile; according to the Mishnah, the young, if it is subsequently slaughtered according to ritual, is כשר, although its mother is "carcass." According to Shulḥān 'Arūk, Yōreh Dē'āh, 13, the young must be at least 9 months old and alive at the time the mother was slaughtered.

[90] Sic!

[91] Ḥul. 4.4.

[92] Ḥul. 9a: שהיה דרסה חלדה הגרמה ועיקור.

[93] Ḥul. 3.2–4, etc.

Another strange thing is that they forbid throwing meat into a pot with cold water, and insist that the water must first be made to boil, because, they say, if the meat is thrown into cold water and then the whole is boiled, the blood dissolves in the water and is subsequently consumed; but if the water is made to boil first and then the meat is thrown in, the blood does not dissolve in the water.[96] This saying of theirs indicates that the eating of the blood in the meat itself is allowed, but in the gravy it is forbidden! The same applies to their prohibition of cooking the liver and the spleen, although they allow eating them raw. Likewise, they think that it is lawful to broil or cook an uncut fish with its blood and eat it; but if the blood leaks out of it, although no incision was made in the body of the fish, the blood is forbidden to be eaten.[97] Also, they allow the eating of floating dead fish, although it is defined (in the Scripture) as "carcass;" they even say that if a dead, unclean fish is caught and a (young, living, and) clean fish is found in its belly, the clean fish is allowed to be eaten. They permit this, although they forbid (consuming) meat (cooked) in milk.[98]

They say that the bones and the hide of the "carcass" and of that which is "torn in the field" are not forbidden to be eaten (and used respectively), and that only the eating of the flesh is forbidden, since it is said [Ex. 22.30]: "Neither shall ye eat any flesh that is torn in the field."[99] But then it would be incumbent upon them to permit the eating of the bones and (the use of) the hide of the swine, since the Scripture has forbidden only the eating of its flesh. The same would apply to the fat, the liver, the spleen, the lungs, and the marrow (of the swine), since all these (parts) are not flesh, while only flesh has been forbidden as food. Now if all these (parts) should be forbidden by the analogy of the flesh, then the hide and the bones should also be forbidden by the same analogy. Likewise, in regard to the Scriptural saying [Deut. 16.4]: "Neither shall there any thing of the flesh which thou sacrificest the first day at even remain all night, etc.", they should allow the above-mentioned things[100] to remain until the morning, since they are not flesh, while only what is left of the flesh is forbidden to remain. The same (in the case of) all the peace offerings; also, in regard to the passage [Lev. 6.20]: "Every one that toucheth its meat shall be holy,"—consequently, whoever touches these things[101] should not be subject to (the command) "he shall be holy."

---

[94] עקל עאקל.

[95] The translation of this phrase is rather free, since the Arabic can hardly be rendered literally.

[96] Cf. Tūr Yōreh Dē'āh, 69; Maimonides accepts this opinion as a law, but the other authorities reject it.

[97] There is no direct prohibition.

[98] The meaning of this juxtaposition is, probably, that the blood of the young unborn fish is theoretically a portion of its mother's blood; therefore, the case of this young fish cooked with its blood is exactly alike to the case of the kid cooked in its mother's milk.

They contradict the clear statement of the Scripture that the feast of Pentecost must fall on Sunday and not on any other day of the week, while they fix it on other days (as well).

They admit that the beginning of months should be fixed by the appearance of the new moon, but they contradict themselves by adopting the intercalation based on "Not on the second, fourth, or sixth,"[102] which has no foundation whatever. It is the system invented by Isaac Nafha; the president of the academy Hai mentions it in one of his books. People explain this (system of) intercalation and the reason for (the rule) "Not on the second, fourth, or sixth" in two ways: some say that they introduced it in order that the feast of the willow-procession[103] might not coincide with the Sabbath, lest the offerings and the vows should be few in number, for it was a custom that whosoever presented himself at Jerusalem used to bring offerings on the day of the willow-procession; if this should happen on a Sabbath the offerings and vows would decrease in number and be confused. Others say that they did it in order that the day of atonement might not fall on a Friday or a Sunday,[104] so that if a man should die on a Friday, the day of Atonement, and Sabbath should be the next day. or if he should die on a Sabbath and the day of Atonement should be next, the dead body would have to remain over two days and two nights and would become fetid.

---

[99] Ḥul. 9.1.

[100] i. e., bones and hide.

[101] i. e., bones and hide.

[102] A chronological formula, meaning that the first day of Passover must not fall on Monday, Wednesday, or Friday. Cf. Mahler, *Handbuch der jüd. Chronologie*, 1916, pp. 495, 497.

[103] ערבה.

They say that [Num. 33.3] "The morrow after the Passover" on which the children of Israel departed from Egypt was the sixteenth of Nisan, contrary to the statement of the Scripture [ibid., ibid.]: "And they departed from Ramses in the first month, on the fifteenth day of the first month; on the morrow after the Passover the children of Israel went out, etc."

Also, they say that the remnant of the Passover must be burned on the sixteenth of Nisan,[105] contrary to the passage [Ex. 12.10]: "And that which remaineth of it until the morning ye shall burn with fire."

To their inconsistencies belongs also their assertion that whosoever has in his house uncircumcised persons is not allowed to partake of the Passover;[106] and yet they say that the children of Israel were offering the Passover in the desert for forty years, although their houses were full of uncircumcised persons, namely those born in the desert; for it is said [Jos. 5.7]: "For they were uncircumcised, because they had not circumcised them by the way."

They permit leavened bread to be brought during the seven days of Passover into the house of a Jew provided that it[107] does not belong to him; i. e., if there is in his house a man not from the people of the (Jewish) faith, this man is allowed to bring leaven into the house of the Jew;[108] they refer to the passage [Ex. 13.7]: "There shall no leavened bread be seen with thee;" they say: this is forbidden "with thee," but it is not forbidden with someone else. But in this assertion there are two faults: first, it contradicts the Scriptural passage [Ex. 12.19]: "There shall be no leaven found in your houses;" secondly, they contradict themselves, for they forbid us to possess leaven deposited in the houses of others,[109] notwithstanding the expression of the Scripture: "In your houses." Now if the expression "with thee" means that it is forbidden "with thee" and not with someone else, then, analogously, the expression "In your houses" should be understood as forbidding only what is in our houses, not in houses of others.

---

[104] Cf. R. H. 20a.

[105] Pes. 7.10; if the 16th falls on a Sabbath the remnant is to be burned on the morning of the 17th.

[106] Cf. Mekilta Piska XV (Friedmann) 17a [L].

[107] i. e., the fermented bread.

They acknowledge the (custom of) searching for the young ears and fixing (the date of) Passover according to it, but they contradict it by adopting a (fixed system of) intercalation. I shall quote later some passages from their own books proving the sacredness of (the custom of searching for) the young ears, namely in the seventh part in which we shall deal with the beginning of the months and with (the custom of searching for) the young ears.

They explicitly contradict the holy text in the case of an ox certified to have killed a man, in which the Scripture prescribes that his owner also should be put to death; (as it is said) [Ex. 21.29]: "The ox shall be stoned and his owner also shall be put to death." They say, however, that he[110] should not be put to death.[111]

They omit the Tamid prayer on the day of Atonement, although there is no doubt of its necessity (on that day), and begin with the prayer *Ḥaṭ'at ha-kippurim*, the Mussaf prayer following immediately after it. Also, they introduced an unknown prayer, called the Ne'ilah prayer, which they recite at the close of the day (of Atonement).

They say that "twilight" means the time from noon till sunset. Then they contradict themselves by saying in the Mishnah that leprosy cannot be discerned at daybreak, at noon, or at twilight, but only during the seventh, eighth, and ninth hour; but this means that these hours do not belong to the twilight-time, yet at the same time they say that it extends from noontime until the approach of the evening!

---

[108] Pes. 2.2.

[109] i. e., Gentiles.

[110] i. e., the owner.

[111] B. Ḳ. 4.2.

They do not permit (reciting) two or three Mussaf prayers on the same day, e. g., on the New Year's day falling on a Sabbath; three Mussaf prayers are necessary in such a case: the Mussaf of the Sabbath, the Mussaf of the first of the new month, and the Mussaf of the New Year's day. They allow (reciting) only one prayer, and they mention in it all the three festivals[112] together. But if this should be allowed, then it should also be allowable to mention these (three festivals) in the Tamid prayer, and then there would be no need for any other prayer.[113] Yet they reject these necessary prayers and introduce (instead) a superfluous prayer, called Minḥāh.

The Scripture says [Lev. 23.40]: "And ye shall take you on the first day," and commands to take material for the building of the booth,[114] as it is explained and described in (the book of) Ezra.[115] But they say that this refers only to the Hōsha'anōt,[116] and that "taking" means only taking by hand.[117] The Scripture commands to make "a holy convocation" one day on every festival, but they make it two days. Likewise, it[118] commands eating unleavened seven days and sitting in the booth seven days, but they make it eight in both cases.

---

[112] Literally, matters (מעאני).

[113] i. e., the Mussaf prayer.

[114] For the feast of Tabernacles.

[115] Ezra the Second, i. e., Neh. 8.15ff.

[116] הושען, i. e., the prayers beginning or concluding with the words הושיעה נא, forming part of the service of the feast of Tabernacles; so Harkavy. But prayers cannot possibly be "taken" by hand. I think the word means here the palm and willow branches carried by the pilgrims in the willow procession‘ during which these hymns used to be recited. In this meaning the word is already used in the Talmud. הושען seems to be merely an abbreviation of הושענות.

[117] But not actual building.

[118] i. e., the Scripture.

They say that if a man dies leaving no children his entire heritage should go only to his brother, if he marries his widow by levirate.[119]

Also, if one dies leaving a minor daughter and a son, the daughter is to receive a tenth of the property; if she is adult she is to receive nothing at all from her father's estate, so that she is left to die of starvation. I should like to know what is the difference between a minor and an adult (daughter) as far as inheritance is concerned?! Is not this law nothing but [Hab. 1.4] "perverted judgment."

The people of Syria prescribe depucelation[120] by means of a finger. Those who undertake to argue in favor of this (custom) say that it serves to prevent a man from committing a sin, inasmuch as he cannot know whether the woman he desires to beget children with is pure and clean or has been defiled; for if she has been defiled, and he has intercourse with her, the cohabitation is unlawful; but if he proves her by the means of a finger to be clean he is safe from sin. It should be said to him who adduces these reasons: Now if this is necessary, pray tell us, does this not make it incumbent upon every man, whenever wishing to cohabit with his wife, to examine her by "the water of the untrue one," since he cannot be sure that she has not been defiled (since the last cohabitation with him)? But then all the Israelites will either have to bring their wives every day to the examination-chamber (?)[121] (of the courthouse) and cohabit with them only after (their innocence has been established), or they will have to watch them day and night. Nay, what we say is more sensible and binding than what they say and prescribe; namely (we say) that a man who desires to beget children with a woman should ascertain her purity or impurity at the first cohabitation before the close of it; then, if he should believe that the matter is wrong, he will be able to prevent (the completion of) the cohabitation.[122] As for a man who wishes to have intercourse with his wife, with whom he has cohabited previously, (and doubts her faithfulness), he has no other way of ascertaining her purity than the one just mentioned.[123] Is not their opinion in this matter most short-sighted?[124]

---

[119] Ket. 8.6–8.

[120] The assimilation of a fatḥa to the preceding and following kesra is quite the rule in Judaeo-Arabic of any period; it is also widely practiced in the modern Moslem Arabic vernaculars.

[121] Literally, furnace (אלכור)[!?].

We dealt here with the refutation of this opinion because we do not wish to deal with it in another place, as it is not included in the laws.[125] This applies also to all other things of this sort which we have refuted here; we have done so because we will not mention them in any other place (of this work). As for such things as require detailed discussion and are not included in the laws,[126] we will postpone the examination of them till the second and the third part where we will deal with each one of them in its own place.

Some of them say about the *penūyāh*, i. e., the unmarried woman, that if men have secluded themselves with her she may marry them; others do not allow her to marry them, meaning (close) relatives; if one of them went in unto her and she brought forth a child, the child is considered a bastard, provided that she herself says that the child comes from forbidden relatives.

. . . [Inhabitants of] Gibeon, although the oath was contrary to the command of God; but they honored the oath as valid in spite of the clearly formulated law [Deut. 20.16]: "Thou shalt save alive nothing that breatheth," and [ibid., 7.2]: "Thou shalt make no covenant with them." Now if God Himself says [Psalms 89.35]: "My covenant will I not break," could anyone else be allowed to do this? And if it is said [Zech. 5.4]: "I will bring it[127] forth, saith the Lord," etc., will anybody doubt that a person disobeying it is as sinful as a person renouncing God?

---

[122] i. e., the conception.

[123] i. e., by the "water of the untrue one."

[124] סכנה̈ עין מן אלאקאויל.

[125] But is merely a custom, and a local one, too.

[126] The text (p. 295, line 22) seems to yield no satisfactory sense as it stands; I propose to read: פאמّא אלד̇י יטול פיה אלכלאם.

[127] The curse upon the false swearer, with reference to the Jews who had sworn to obey the divine law, and yet violated their oath.

Our coreligionists neglect these doctrines of theirs[128] and do not consider them worthy of study. Yet if they would make a thorough study of them they would no longer need to employ speculation and dialectics to refute the Rabbanites.[129] Only of late have some of them begun to study this, and these absurdities and contradictions became evident to them.

They say that one who has just consummated marriage is not allowed to repeat the cohabitation until the expiration of seven days, lest together with the blood of virginity there should also appear the blood of menses, so that he would have cohabited with a menstruating woman. It was said to them regarding this: If this is so, then everything she comes near to during these seven days should be considered unclean, since we cannot determine whether she is menstruating or not; namely, everything subject to doubt should be treated in the most rigorous way. Likewise, they should require that everyone who came near his[130] bed should bathe himself and wash his clothes. In general, they should require that the bridegroom should be treated during these seven days in the same manner as the bride, on account of the passage [Lev. 15.24]: "And if any man lie with her and her impurity be upon him, he shall be unclean seven days." Yet they do not require this, but contradict themselves.

The same applies to their permission of (marrying) the daughter of the brother and the daughter of the sister, although there is no difference between them and the paternal and maternal aunts, since (people with sound) minds do not make any distinction between the paternal uncle and the paternal aunt or between the maternal uncle and the maternal aunt; that is, the relation of the paternal uncle to the daughter of his brother is the same as the relation of the paternal aunt to the son of her brother.[131] The same applies to the maternal uncle and aunt.

Also, they allow a man and his son to marry a woman and her daughter (respectively), although according to the Scripture their[132] relation to each other is that of brother and sister.

---

[128] Read אקאוילהם.

[129] i. e., a mere reference to these doctrines would be sufficient proof of the falseness of the Rabbanite theology.

[130] i. e., the bridegroom's.

[131] According to Jewish law, a man may marry his niece, but not his aunt.

What is more strange than a person pronouncing a blessing over the Sabbath-eve lamp and saying in the blessing that God commanded it? Likewise, over the lamp of Hanukkah.

Another strange thing is their opinion about *piṭṭūm ha-Ḳeṭōret*, i. e., the mixture of incense,[133] which consists, according to the Scripture, of four things, namely rosin, acanthus, galbanum, and incense. But they add to that several other things, namely, balsam, musk, sandal-oil, and caper-syrup. Again, the Scripture says that it should be composed of an even number of ingredients, but they make it sometimes of seven,[134] sometimes of nine, and sometimes of three. Even more mistaken is their opinion that urine is very good for it, but since it could not be brought into the Temple they substituted for it caper-syrup. But their assertion that urine is very good for it, because God had first ordered it, although they[135] subsequently substituted for it (caper-syrup), cannot possibly be true; for had it been ordered (in the first place) no substitution would have been lawful in any case. And if the Creator did not order it, then what is the idea of mentioning it and what reason is there to believe such a thing? Is not this idea (foolish) to the utmost degree?[136] Dost thou not see what is better for it, urine or ambergris and camphor? Is there any limit left for them who say[137] such shameful and foul things? May God protect us against such foolish and utterly stupid people!

They have so many other shameful and obviously wicked customs that it would take too long to describe them. I am not going to list all of them, as I wish to shorten (my account), since my aim is to deal with strictly Scriptural laws (only). Yet notwithstanding such doctrines of theirs as we mentioned above they assert that they are the (only) holders of the (true) tradition and that they have received (their laws) directly from (men endowed by God with) prophecy, that they are the (highest) authority in the Hebrew language, the learned ones and the teachers. I will later quote their sayings about this and give a complete account of their arguments in favor of it together with (my) refutation. Now, in the following chapter I will quote some of their sayings concerning matters other than law, such as aim to abrogate the entire faith and to affirm heresy and apostasy, for in this also there is a warning against their (corrupt) ways and a refutation of their claim to be recipients from (men of) prophecy.

---

[132] i. e., that of the younger couple.

[133] Ker. 6.

[134] Read סבעה̈.

[135] Read פאבד̇לו.

[136] קדרה̈ מן אלקול; cf. Dozy, s. v.

[137] Read לקאיל.

Chapter IV

ACCOUNT OF THESE THINGS

We have already mentioned at the beginning of the preceding chapter what they say about the corporeality and human form (of God); also what they say in (the book entitled) "Measure of the stature (of God)" about the measurements and the dimensions (of God) from the toes to the head. They say, moreover, that (the archangel) Michael places phylacteries on His head every day, and that His height from the sole of His foot up to His entire stature comprises 236,000 parasangs. This contradicts the saying of the Scripture [Job 11.7]: "Canst thou by searching find out God?" and the saying [Isa. 40.18]: "To whom then will ye liken God?!"

They say in (the book entitled) "Alphabet of [Rabbi] Akiba" that the Creator said: "I have taken Enoch son of Jared and raised his high rank above you all among those high of rank;[138] I have made his throne seventy thousand parasangs higher than My throne, and I have made his dignity greater than Mine." They say in the same "Alphabet" that the Creator dances before the righteous at the banquet which He arranges for them in the garden of Eden and says to them: "I came to you only to eat and to drink with you."

---

[138] The Arabic text is undoubtedly corrupt; קאמתי should be emended to קאמתה; the second ארתפאע is a dittography, and עלי-כל is a misinterpretation of עליכם. The phrase originally read: רפעת עליכם ארתפאע קאמתה פי וסט אלכ'. Cf. the Hebrew text (in Jellinek's *Bet ha-Midrash* II, 115): רוממתי עליכם רום קומתו בתוך כל רמי הקומות. As for קומה, קאמה̈ it means probably rank, מנזלה̈, rather than stature in the physical sense.

They say in the "Book of Ishmael"[139] that every morning Metatron ties phylacteries upon the head of the Creator—but the Creator our God is exalted[140] far above this; and that every day in the morning at the approach of the time of the Shema'-prayer Metatron stands up with awe and dread and fear and binds the phylacteries upon the Creator's head; also, that the height of Metatron's stature is equal to the depth of seven abysses and seven springs, or to the (combined) height of (all) the "great chiefs,"—I think this means the angels. They say also that the Creator sits upon His throne, while he[141] stands upon his feet; nevertheless he[142] cannot tie the phylacteries[143] unless he stretches himself and lifts his foot.

They say in the Talmud[144] that the Creator prays, referring to the passage [Isa. 56.7]: "I will make them joyful in My house of prayer," and that His prayer is as follows: "May it please Me that My mercy should overcome My anger so that I may deal leniently[145] with My creatures." May He be blessed to whom prayers and glorifications are directed, and may He be elevated and exalted, our God, our Creator, above (all) that which dirty heretics ascribe to Him!

They say in (the book entitled) "The fear of sin:"[146] "There is no reward awaiting thee for reading and studying the Torah, but only for (studying) the Gemara[147] of the Rabbanites." In the same spirit they say:[148] "The study of the Scripture is in the same time an asset and not an asset; (the study of) the Mishnah is an asset, and one receives a reward for it; (as for the study of) the Gemara, there is nothing greater; but always be most eager to study the Mishnah."[149] This contradicts the passage of the Scripture [Jos. 1.8]: "And thou shalt meditate therein[150] day and night."

---

[139] i. e., the mystic work Hēkālōt de-Rabbi Yishmā'ēl; I could not find any such passage in Jellinek's edition of this work.

[140] יצלי is evidently a mutilation of תעאלי; cf. p. 287, line 16.

[141] i. e. Metatron.

[142] i. e. Metatron.

[143] upon the Lord's head.

[144] Cf. Ber. 7a [L].

[145] The MSS have במדת הדין; as Harkavy points out this is an obvious mistake for במדת הרחמים.

[146] This is merely another name for the Masseket Derek Ereṣ Zūṭā; cf. *Festschrift Steinschneider*, p. 72sqq. The passage here quoted is found in Derek Ereṣ Zūṭā, chapter 4.

[147] גמאר is evidently an arabization of גְּמָרָא; there is also a pun here on the

The Scripture says that on the day when the Temple was destroyed mourning, weeping, and similar actions were prescribed on account of the disobedience (of Israel); as it is said [Isa. 22.11]: "But ye have not looked unto the Maker thereof," etc., (and) [ibid., 22.12]: "And in that day did the Lord God of hosts call to weeping and to mourning," etc. But they say in the (books entitled) "Order of the Gehenna"[151] and "Repentance (?) of Ahab"[152] that this mourning, weeping, plucking out[153] of the hair, and coarse clothing[154] were instituted by the Creator for Himself only. Will God ever make Himself truly known to people who assert that he weeps and mourns and covers Himself with hair cloth?[155]

They say in the Talmud[156] that God has a place called "Secret places," where He weeps; as it is said [Jer. 13.17]: "My soul shall weep in secret places." They say in the same passage that He says: "Woe unto Me, for[157] I have destroyed My house and exiled My people." They say that the angels weep with

---

Arabic meaning of גמאר ("nonsense"). It is strange that al-Qirqisānī paraphrases here a quotation, while as a rule he is very accurate in quoting from Hebrew sources.

[148] B. M. 33a end.

[149] Cf. Rashi, ad locum.

[150] In the Scripture.

[151] סדר גיהנם, not identical with the מסכת גיהנם, since no such thing is found in Jellinek's edition of the latter.

[152] Or, "Reply of Ahab" (תשובת אחאב); such a title is not known.

[153] Literally, baldness (צלעה̈).

[154] וזרה̈, actually an apron tied around the loins in the bath-house, is here used in the sense of the Hebrew שׂק.

[155] מסח, here used for Hebrew שׂק.

[156] Ḥag. 5b.

[157] A peculiar use of אדֹא in the sense of the Hebrew שֶׁ.

Him, and that ever since His house was destroyed His stature is bent down. They say that He plucked out some of His hair with His own hands, and that up to this day no one has been allowed to see Him.[158] All this contradicts the saying of the Scripture [Job 26.14]: "How little a portion is heard of Him!"

They say in the Talmud[159] that when the children of Israel neglected the (holy) laws the enemy of the Creator became destitute. They use the expression "His enemy" as a metaphor for the Creator Himself; it is the same as if a man, asked about (the health of) his child, would say "his enemy is sick," lest he should mention sickness in connection with his child. They refer to the passage [Eccl. 10.18]: "By much slothfulness the building[160] decayeth;" they say that "building" means God, as it is said [Psalms 104.3]: "Who layeth the beams[161] of His chambers in the waters."

They say in their Aggadah, which is known as "The Talmud of the children of Rabbi"[162] that the Creator learned from Moses three things. The first (appears) from the story of the (golden) calf, when He wished to destroy the children of Israel; as it is said [Ex. 32.10]: "Now let Me alone, that My wrath may wax hot against them and that I may consume them." Moses, however, said to Him [Num. 14.13]: "Then the Egyptians shall hear it, for Thou broughtest up this people in Thy might," etc., (and they shall say) [ibid., ibid.]: "Because the Lord was not able." Thus the Creator was reminded of this (circumstance), and He said to him: "Thou hast revived Me with thy speech:" they infer it from the passage [ibid., 14.21]: "As truly as I live."

---

[158] i. e., to disturb His solitude? The text has לם תתקדר מערפתה literally, "knowledge of Him has not been made possible (?)"; the phrase is not clear to me, and the interpretation I have given above is no more than a conjecture.

[159] Ta'an. 7b.

[160] הַמְּקָרֶה.

[161] הַמְקָרֶה.

[162] תלמוד בני רבי; Harkavy's suggestion that this is the Palestinian Talmud is probably wrong, as such a story, at least as it is quoted here, is not found there; some similar stories are found in the Midrashic literature. Whether the "Talmūd benē Rabbī" is also some Midrash, as Bacher supposes, is more than I can decide.

The second (is this): the Creator said to Moses in the story of Sihon [Deut. 2.24]: "Contend with him in battle;" Moses, however, did not approve of it and did the opposite of it, as it is said [ibid., 2.26]: "And I sent messengers out of the wilderness of Kedemoth unto Sihon king of Heshbon," etc. The Creator realized the wisdom of his action and said to him: "O Moses, I shall withdraw My word and confirm thine." Thus, the Creator learned this (wise and cautious policy) from him and applied it thereafter (in the Torah); as it is said [ibid., 20.10]: "When thou comest nigh unto a city," etc. I think this story is from the Talmud. Are there any other stupid and low things left that they do not attribute to the Wisest of the wise who [Dan. 2.21] "Giveth wisdom unto the wise and knowledge to them who know understanding," who granteth power to every mighty one, of whom it is said [Psalms 37.23]: "The steps of man are ordered by the Lord;" [ibid., 147.5]: "Great is our Lord and of great power;" [ibid., 147.10]: "He delighteth not in the strength of the horse."

What a multitude of sayings of theirs of this sort one might be able to enumerate! But I have limited myself to the enumeration of the above few in order to make clear their impiety and heresy, as well as the insolence of those of them who consider themselves men of tradition and defenders of God('s true faith) inasmuch as (they think that) they are recipients from (men endowed by God with) prophecy. It will be sufficient for thee (to learn) what they say in the Talmud about Eliezer ben Hyrcanus:[163] A company of scholars was debating the question as to what vessels become impure by coming near to an oven made of single pieces (of stone) and rings in such a way that the rings are laid one upon another, and between every two pieces there is a lump of clay, and between every two lumps of clay there is a gap; the question was, does such an oven cause impurity or not? All the scholars decided that it must cause impurity, but Eliezer did not think so. Whatever arguments he adduced they did not accept, until he had to perform miracles to prove (the correctness of) his opinion. In the first miracle the water that was running downwards turned back and ran upwards, but they did not accept it. In the second miracle a carob-tree moved several cubits from its place, but they did not accept that either. In the third miracle the walls of the college[164] building inclined, but they did not accept even this. When he saw this (obstinacy) on their part he called upon the heavens to bear witness in his behalf, and a heavenly voice,[165]—they mean by this the voice of the Creator—, resounded and said: "What have ye to do with Eliezer, the truth is with him!" Thereupon Joshua ben Hananiah[166] stood up and beckoned to heaven . . .

---

[163] B. M. 59a end and 59b.

. . . [Cant. 7.6]: "The king is held in the curls (?)."[167] Eliezer[168] used this word in that sense in the elegy which they recite on the day of Atonement in (the prayer beginning with) "Thine is the earth and its inhabitants." This is evidenced by his expression: "And the exalted hand held in the curl(?)."[169] Perhaps the expression used by him and by the Jews "The hand of God is manacled"[170] (originated in this way): this verse occurred to his mind and he derived therefrom his expression.

What is more shameful than their saying in the Talmud:[171] "Whosoever is overcome by passion let him put on black clothes and cover (his face) with black cloth and let him go to a place where he is unknown, and let him satisfy there his desire, lest he should profane the name of Heaven publicly." By this saying they allow lewdness and adultery if one has only put on black (clothes) and gone to a place where he is unknown!

They say in the Talmud[172] that Metatron is the "little Lord" and that his name is like the name of his Master.[173] Before him is an altar, the spirits of the righteous dwell near him and the souls of the scholars of the Talmud are sitting around him, while the angels stand erect before them. He studies with them the Talmud and the Halakah. (At one time) they continued to study until they disagreed over the passage of the Scripture [Lev. 13.4]: "If the bright spot be white." They said that it is clean,[174] whereas the Creator said that it is unclean, but these souls around Him did not agree with Him. So He sent an angel to fetch the soul of Rabba ben Nahmani, as this Rabba was a learned and eloquent man. The angel, however, was not able to take his soul, for he heard him studying the Talmud; so he returned to his Sender and told Him the matter. The Sender said to him: "Appear before him unawares and set the trees around him in motion by means of a stormy wind, and as soon as he pauses take his soul." He did so, and his[175] soul ascended (to heaven) calling "clean, clean," thus nullifying the Creator('s decision) and supporting (that of) His opponents. Then the Creator said: "They have prevailed over Me." This resembles the story of Eliezer ben Hyrcanus which we have quoted above, (especially) the Creator's words: "My children have prevailed over Me;" it contains just as many shameful and insolent things as that (story), or even more. They say that out of consideration for the soul of this Ben Nahmani[176] his body was not left for the dogs, but a leaflet was thrown down from heaven to the college of Sura (?)[177] in which there was written that Rabba ben Nahmani had been called away to direct the heavenly college. (The students) went around in the brushwood and thickets and in (other places covered with) vegetation until they [saw][178] birds and beasts of prey (watching) over his body. They lifted it up and went with it (to the burying place) and mourned for three days. But when they wanted to depart another leaflet fell down from the clouds in which there was written: "Whosoever will depart shall be anathematized;" so they resumed the mourning for seven days more; then a third leaflet fell down (reading): "Depart in peace," and they left him and went away. Thereupon a stormy wind arose (threatening) to destroy the world, for he[179] desired that it should bring him[180] up into the heavens. An Arab asked: "What is it all about?", and they said to him: "Ben Nahmani has been taken up into the heavens." Then he[181] began to reprove the Creator saying: "Thou hast created Ben Nahmani and Thou hast taken his soul; wherefore, then, desirest Thou to destroy the world?" Thereupon the wind ceased. Thus, in the beginning of (this) story we are told that Ben Nahmani declared the Creator's opinion to be wrong and void, and that the Creator admitted that He was silenced by him and agreed that Ben Nahmani's opinion is the right one and His, i. e., the Creator's, the wrong one. In the latter part of the story we are told that the Bedouin quarreled with the Creator and reproached Him for wishing to do an unjust thing, and that the Creator desisted from doing what He wished to do!.

---

[164] Read אלמדרסה̈ (Bacher).

[165] בת קול.

[166] The text has erroneously: ben Levi.

[167] ברהטים.

[168] ha-Qalir?

[169] רהט, Eliezer apparently interpreted the word as meaning "chain."

[170] Read מגלולה̈.

[171] Ḥag. 16a.

[172] As Harkavy points out, this passage is found not in the Talmud, but in the above cited book "Alphabet of Rabbi Akiba."

[173] Cf. Sanh. 38b.

---

[174] Cf. B. M. 86a.

[175] i. e., Rabba's.

[176] He died a martyr's death.

[177] מת̇יבה̈ אלסוראניין.

[178] Some verb like ראו is missing.

They say that the Creator observed a seven days' mourning for Methuselah; for it is said [Gen. 7.10]: "And it came to pass after seven days, that the waters of the flood," etc.

They say[182] that a man (of the heretics) asked Rabbi Abbahu[183] (a question) saying: "Your God is a priest, since he said [Ex. 25.2]: 'They shall bring Me a tax;' if so, where did he submerge for ablution after He had buried Moses? If thou sayest that He washed Himself in water, then is it not said [Isa. 40.12]: 'Who had measured the water in the hollow of His hand?' Therefore the water (of the entire universe) would not cover Him up."[184] Rabbi Abbahu replied: "He submerged in fire,"[185]—they infer it from the passage [ibid., 66.15]: "For the Lord will come with fire,"—"and this is (a kind of purification) allowed by the Torah, as it is said [Num. 31.23]: "Every thing that may abide the fire ye shall make it go through the fire, and it shall be clean."

---

[179] i. e., Rabba ben Nahmani?

[180] i. e., his body?

[181] i. e., the Arab.

[182] Sanh. 39a.

[183] The text has erroneously "Rabba."

[184] And ablution requires complete submersion.

[185] Qirqisānī, perhaps purposely, ignores the most important sentence in Abbahu's answer. Abbahu merely seeks to refute his (Christian) opponent by stating that the latter ought not to find a baptism in fire strange. He alludes to Matt. 3.11 [L].

They surpass in nonsense and lying even the Christians. As a matter of fact the Christians rely in many of their doctrines upon nonsense and insolence, since persons who acknowledge and admit the truth of the Jewish religion never profess these doctrines. Therefore, when it became evident to them[186] that in their[187] translation of our (holy) books many changes and alterations have been introduced, their insolence prompted them to assert that the Syriac (!)[188] language is the earliest one. This is asserted on the authority of Cyprian[189] and others of his kind. But many of them argue that no changes or alterations have been introduced in the translation because the king Ptolemy[190] gathered seventy Jewish elders, placed every two of them in a separate room and commanded them to translate for him the twenty four books (of the Old Testament). After they had done so he collected the translations (of each pair), but found no differences between them. This is what they call "The translation[191] of the seventy." The Rabbanites confirm[192] their[193] story about it and call the king who sponsored it Talmai; only they say that the Creator instructed all of them to write the same, and that they (purposely) altered only ten passages and translated them not as the literal translation should be. Namely, (they translated): "God created in the beginning;"[194] "I will make man in an image and in a likeness;"[195] "Male and female created He them;"[196] "And God finished on the sixth day and rested on the seventh;"[197] "In their selfwill they destroyed a feeding trough;"[198] "And Moses took his wife and his sons and mounted them on a carrier of men;"[199] "Not a valuable of theirs."[200] Instead of "hare" (they wrote) "the small-pawed."[201] (They also translated thus:) "And the sojourning of the children of Israel, who dwelt in Egypt and in all the countries;"[202] "Which the Lord thy God hath divided to give light unto all nations."[203] In such a way they attribute to the Creator falsification and inspiration of lies, which is the highest degree of corruption, since the inspirer and suggester of lies is the maker of lies and the maker of lies is a liar. Now here is one of the arguments that should be adduced against the partisans of anthropomorphism:[204] if it had been the Creator who did it because the passages he caused to be altered were of a misleading[205] appearance and because He knew that this king would loathe these passages, if they should be translated for him literally, and would calumniate their (divine) author, then He would necessarily have changed all passages of this kind. For instance, if He had changed (the passage) [Gen. 1.26]: "In Our image and after Our likeness," because it implies anthropomorphism, then He would necessarily have changed everything similar to this, e. g., [Gen. 9.6]: "For in the image of God made He man;" also [ibid., 5.1]: "In the likeness of God made He him." Yet they do not assert that they[206] changed these (passages, too). Likewise, He would necessarily have changed all Scriptural passages describing (God as a person) with limbs, like hand, eye, ear, and mouth. Which is more sensible, to alter (the passage) [Gen. 1.1]: "In the beginning God created," in which there is absolutely nothing disgraceful or shameful, either in its exterior or in its interior, or the passage [Num. 12.8]: "With him will I speak mouth to mouth," which implies that God spoke to Moses with His mouth? What a multitude of (passages) of this sort may there be in the Scripture, which cannot even be counted and which are of a more misleading appearance than the above cited, e. g., [Isa. 1.14]: "I am weary bearing," implying weariness with reference to God; or [Psalms 50.12]: "If I were hungry I would not tell thee," which implies hunger; or [Isa. 43.24]: "Thou hast made Me to serve with thy sins, thou hast wearied Me with thine iniquities." This is like what they say about the "Corrections of the scribes;"[207] we will mention it later. Furthermore, their lying is evident from the fact that we find these very passages, which they mention as having been changed and altered, (in the translation current) among the Christians in (a form) contradicting their assertions, i. e., in a form agreeing exactly with our (text), without any alteration. The proof for this is the fact that the Christians adduce against us this (very) passage of the Scripture [Gen. 1.26]: "In Our image and after Our likeness" in defense of their anthropomorphic doctrines. We shall mention this (again) in the course of our account, namely in our refutation of the arguments of the Christians. Likewise, the beginning of their (version of the) Torah reads: "In the beginning God created."[208] The same applies to all that they say about them.[209] Is there any lie more weak,[210] absurd,[211] and useless?

---

[186] i. e., the Christians.

[187] Read להם.

[188] אלסריאני! Read אליונאני (the Greek)?

[189] קופרי.

[190] בטלימוס.

[191] אכ̇ראג̇; one of the uncommon cases where this word means translation.

[192] Meg. 9a.

[193] i. e., the Christians'.

[194] Cf. Gen. 1.1.

[195] Cf. Gen. 1.26.

[196] Cf. Gen. 1.27.

[197] Cf. Gen. 2.2.

[198] Cf. Gen. 49.6.

---

[199] Cf. Ex. 4.20. [200] Cf. Num. 16.15.

[201] According to the tradition they did so in this case out of consideration for Ptolemy I who was surnamed "Hare" (Λαγως).

[202] Cf. Ex. 12.40.

[203] Cf. Deut. 4.19.

[204] i. e., the Rabbanites.

[205] Literally, ugly (Read: שניעה).

[206] i. e., the seventy elders.

This is what prompted us to mention these opinions of theirs: Some of them, when asked about any of the things mentioned above, call it a slander; others assert that not all of the Rabbanites hold these opinions, but only a few of them do so. I have even been told that some of them assert that none of these things belong at all to the teaching of the Rabbanites, but that only (their) opponents manufactured them and shoved them in[212] among the doctrines of the Rabbanites. But from now on, when they deny it before you and call you liars and impose anathemas and curses upon him who says so[213] and upon him

[207] תיקון סופרים.

[208] בקדמין ברא י"י; but this is the Targum! The Syriac has ברישית וכו'.

[209] i. e., the Rabbanites about the seventy elders.

[210] Literally, cold (אב̈רד).

[211] Literally, meagre (אג̈ת̇).

[212] דס̈והא.

[213] i. e., says that the Rabbanites hold such opinions.

who knows that the Rabbanites profess such doctrines and refutes (them) and tries to overcome[214] (them), you will (easily) silence them with that (which is narrated above).

It was my intention to refute here (at length) some of their above mentioned doctrines such as do not belong in the discourse on the laws, e. g., their belief in anthropomorphism, (their assertion) that the Torah (in its present form) is not the one brought down by Moses, etc., as well as to prove the falseness of their assertion that their doctrines are approved by the consensus of authorities, and that they are recipients (from men of prophecy). But I am postponing it until I shall dispose of the account of the differences of individual sects, so that the refutation of their doctrines and of the doctrines of the other sects may proceed without interruption.

They revere the Targum of the Torah so much that they assert that Onkelos the proselyte recited it from the mouth of Haggai, Zechariah and Malachi;[215] they join it to the Torah of God and recite it with the Torah verse after verse. It contains absurdities which cannot even be imagined: e. g., he interprets (the word עירה) in [Gen. 49.11]: "Binding his foal unto the vine" as meaning "his city;" he translates [Deut. 23.18]: "There shall be no whore" as if it was meant by it that no woman of the daughters of Israel should marry a slave and no man of the children of Israel should marry a female slave; he translates [Ex. 12.48]: "No uncircumcised person shall eat thereof" as "No renegade[216] shall eat thereof;" he translates [Gen. 28.21]: "Then shall the Lord be my God" as "Then shall the word of the Lord be my God." Nevertheless, he contradicts the Rabbanites in more than one thing: e. g., he says that Enoch died, while they all agree that he ascended to heaven and lives; he says that תורים means turtle doves, whereas they assert that it means a domestic fowl.

---

[214] Read יכאבר.

[215] This is not true; Onkelos is said to have recited his Targum from the mouth of Rabbi Eliezer and Rabbi Joshua; it is Jonathan ben Uziel, who made the Targum Jonathan, who recited it from the mouth of these three prophets; see Meg. 3a.

[216] משומד; our text of the Targum has כל בר ישראל דישתמד.

CHAPTER V

ACCOUNT OF THE DOCTRINES OF THE SAMARITANS WHICH ARE DIFFERENT FROM THE DOCTRINES OF THE ENTIRE PEOPLE (OF ISRAEL)

The Samaritans do not recognize any prophet except Moses and Joshua and do not acknowledge any book of prophecy except the Torah and the book of Joshua.[217] They do not recognize (the sanctity of) Jerusalem and their prayer is (directed) towards Shiloh (!).[218] They offer sacrifices down to the present day. They have a priest who does not mix among them and does not intermarry with them,[219] according to what we have been told. They do not mix with, nor come near to, any person (of another faith), and if any person who is not one of them comes near to them they wash themselves. It is said that they reckon the beginning of months by a (system of) intercalation which is supposed to be the "intercalation of Jeroboam." It is also said that when a garment of theirs becomes (ritually) unclean, they put it in a vessel, e. g., an earthen jar, close the vessel and submerge it in water; thereupon they consider the garment clean, although the water never moistened it; they think that in such a way they carry out (literally) the command of the Scripture [Lev. 11.32]: "It shall be put into water."[220] They consist of two factions, one called Kushan, the other Dustan.[221] One of these factions does not believe in future life.[222] They have altered some words in the text of the Torah,[223] e. g., they read [Ex. 20.18]: "And all the people heard the voices;" they read [Gen. 4.8]: "And Cain said to his brother Abel: Come, let us go out in the field." As for other things (of this sort), we shall mention some in our account of the doctrines of Ismā'īl al-'Ukbarī.

---

[217] Of course, the Samaritan book of Joshua has nothing to do with the Biblical book of the same name.

[218] Sic! Read שְׁכֶם?

[219] i. e., probably, with families not of priestly descent.

[220] Inasmuch as the Biblical command does not expressly say that the water should moisten the cloth.

[221] i. e., the Dositheans.

[222] אלמעאד; how Harkavy could come to translate this word as "festivals" I do not know; did he consider the word an arabization of the Hebrew מוֹעֵד? But this is hardly likely.

[223] Cf. Soṭa 33b.

Chapter VI

ACCOUNT OF THE DOCTRINES OF THE SADDUCEES, WHICH ARE AS FOLLOWS

For example, they prohibit divorce, although it is declared (by the Scripture) to be permissible. Also they make all months of thirty days; perhaps they rely in regard to this upon the story of Noah.[224] They exclude the Sabbath from the number of the days of the feast of Passover, and observe the feast for seven days in addition to the Sabbath; likewise, in regard to the feast of Tabernacles. They probably imagine that it necessarily follows from the passage of the Scripture [1 Kings 8.66]: "On the eighth day he sent the people away;" here the eighth day can be only the twenty second (of the month), but if the Sabbath is excluded from the number of eight days, the eighth day becomes the twenty third. Daūd ibn Marwān al-Muqammiṣ[225] treats (in one of his works) of some of their doctrines; we shall mention them at the end of the following chapter.

Chapter VII

ACCOUNT OF THE DOCTRINES OF THE MAGHARIANS

The Magharians fix the beginning of months by the appearance of the new moon. They adduce certain reasons in support of this (method); we shall mention them when we come to the discourse on the beginning of months and its indications. It is said that there are among them some who think that laughter is unlawful. Their interpretations of some passages in the Scriptures are altogether improbable and resemble foolish talk. Daūd ibn Marwān al-Muqammiṣ says in one of his books that the Sadducees ascribe corporeality to God and understand all the

---

[224] The comparison of the passages Gen. 7.11; 8.3; and 8.4 seems to prove that five months made out 150 days, or 30 days a month.

[225] About him see below, Chapter VIII.

Scriptural descriptions of Him which imply anthropomorphism in their literal sense. The Magharians are said to be opposed to this, i. e., they do not profess anthropomorphism; yet they also do not take these descriptions (of God) out of their literal meaning, but assert instead that these descriptions refer to one of the angels, namely to the one who created the world. This (opinion) is similar to the view of Benjamin al-Nahāwandī which we shall explain later. As for Boethus who was, as we said above, the companion of Zadok,[226] he used to say that the feast of Pentecost must fall on Sunday only, just as our coreligionists say.

Chapter VIIIa

ACCOUNT OF JESUS, AND EXPOSITION OF THE TEACHING OF THE CHRISTIANS, INCLUDING THAT WHICH DAŪD AL-MUQAMMIṢ SAYS ABOUT THE ORIGIN OF THEIR TEACHING

The Jews differ greatly in regard to Jesus. Some say that He claimed to be a prophet, and some deny it. As for the Rabbanites, they mention this in the Talmud (section) "Ḥēleq;"[227] they admit that he performed miracles, but assert that he did it by means of magic and by (invoking) the secret name (of God).[228] As for Benjamin (al-Nahāwandī), I was told that he said that five Jewish men (fraudulently) claimed to be prophets, one of them being Jesus. He said: "To them refers the passage of the Scripture [Dan. 11.14]: 'Also the rebellious sons of thy people will lift themselves up to establish the vision, but they will stumble.' "[229] As for some of the Karaites,[230] they say that Jesus was a righteous man and that his way (of teaching) was the same as that of Zadok and Anan; but the Rabbanites went after him until they killed him, just as they sought also to kill Anan, although they could not do it. This is their way with everyone who attempts to oppose them.

---

[226] Cf. Ābōt de-Rabbi Nāthān, chapter 5.

[227] Cf. Sanh. 107b in uncensored edition.

[228] For the alleged acquaintance of Jesus with magic cf. Shab. 104b, and Rashi ad locum. See also Herford, *Christianity in Talmud and Midrash*, pp. 54–56.

[229] The well-known Karaite scholar Japheth ben Eli, in his (MS.) commentary to this passage (quoted by Harkavy, p. 258), refers this passage to the pupils of Jesus.

[230] So MS. A; MS. B reads: As for the opinion of (all?) the Karaites.

Jesus forbade divorce, just as the Sadducees did.

As for the religion of the Christians which they profess to-day, it was Paul who introduced and established it. He was the one who invested Jesus with divinity, and he claimed to be a prophet ordained by his lord Jesus. He[231] did not make any (new) laws at all, and he did not declare anything to be obligatory. He asserted that religion consists merely of humility. Therefore, they assert that their fasts and prayers are not obligatory, but are only a matter of free will. He did not prohibit any kind of food at all; on the contrary, he permitted all animals, from the gnat to the elephant.

As for the religion of the Christians which they profess to-day, it is outright heresy. E. g. they say that the Creator is one substance in three hypostases; that He is one in three and three in one, for, according to them, He is living and knowing; but life and knowledge are two qualities of the substance, therefore the substance is one hypostasis and the two qualities are two hypostases, together three hypostases. They assert that Jesus is the Messiah who was predicted by the prophets and whose advent was promised by them; that he is one of the three hypostases, and that the three hypostases are Son, Father, and (Holy) Spirit; the Son is Jesus who is divine and human, for the Creator who is the substance personified Himself in him. This is all that they say, though they differ among themselves in particulars.[232] They assert that the Temple referred to by the prophets as going to be built and restored, i. e., the one seen by Ezekiel (in his vision), is the one built by Zerubbabel, and there will be no other; also, that all the announcements made by the prophets have (already) been carried out and have come to pass.

The modern Christian philosophers assert that the laws of the Torah were given to the children of Israel only because of (God's) wrath; and that they have chosen these laws for themselves only on account of their resemblance to the laws of the Sabians. This was due to the fact that they became accustomed to the ways of the Egyptians during their sojourn with them, these ways being akin to the ways of the Sabians. According to them, the doctrine of the Creator being a substance in three hypostases was a secret not revealed by God to anyone of the predecessors (of Jesus), since the minds of men at that time were unable to comprehend it; but when Jesus came and there arose (a generation of) men able to comprehend it with their minds, this doctrine was revealed and taught to them. They assert that the word of God is as old as He is; here is one of their main arguments in support of this: John says in his Gospel, which is one of the four Gospels: "In the beginning was the word, and the word was with God, and God is the word."[233] Aside from this, they base their claims upon some ambiguous passages in our Scripture;[234] we shall mention their arguments, together with our refutation of them, later, namely after we will have refuted their doctrine from the point of view of pure reason.

---

[231] Probably Jesus, not Paul.

[232] והם אלמכ̇תלפין פי אלתפ̇ציל; the translation is uncertain.

Here is what Daūd ibn Marwān al-Raqqī[235] relates about the origin of the Christian religion. Daūd ibn Marwān al-Raqqī, known as al-Muqammiṣ, was a philosopher. Originally a Jew, he was converted to Christianity in Nisibis through the agency of a man named Nānā. This Nānā was greatly honored among the Christians, for he was an accomplished philosopher and practiced surgery. Daūd al-Muqammiṣ was his pupil for a great many years; he learned thoroughly the origins of Christianity and its mysteries and mastered philosophy. But (afterwards) he composed two books against the Christians in which he attacked them; these two books are well known. He also translated from among the books and the commentaries of the Christians a commentary on Genesis, called "Book of creation"[236] and a commentary on Ecclesiastes.

Daūd ibn Marwān says: When the Christians could not find in the Gospels any decisive regulations about certain things, they claimed that Paul and Peter—who is the Jew Abba Saul the fisherman[237]—laid down for them laws and regulations found neither in the Gospels nor in the Torah, excepting those concerning Sabbath;[238] and that these two men commanded them to obey these laws, saying that these laws were divulged to them by Jesus. They made decisions and passed judgments according to these laws (for some time). At the time, however, when the regulations laid down by Paul and Peter were no longer sufficient to provide for their needs, (a company of) bishops assembled in the city of Nicea and laid down for them (new) regulations in addition to those of these (two men). These new laws were accepted and became the standard authority; but there is no mention of them either in the Torah, or in the Gospels, or in the Canon of Peter and Paul. The Christians believe them to be the laws of God and pass judgment according to them, yet there is no (divine) authority back of it.[239] (Daūd) says: Whoever examines them knows it. Nor was it only these three hundred and eighteen bishops who laid down for them such regulations; on the contrary, various authorities had made similar prescriptions; and they[240] took their direction from whichever of them they wished. He says: The reason for this is that their Gospels . . . to accept the opinion of anyone who has his own opinion, even without (requiring) any proof from the Gospels. These bishops were at the time of Constantine the Leprous,[241] son of the innkeeper Helena.[242] It was he who introduced the (symbol of the) cross and built (many) churches; he killed Arius because the latter asserted that the Messiah is created. These are the men who established the (Christian) religion. They do not consider lawful any prayer, sacrifice, or worship, except the (form of worship) ordained by these men, together with (the duty) to keep constantly in mind (the fact) that these men have laid down a certain code of rules regulating this (form of worship).[243]

---

[233] An exact translation of John 1.1.

[234] i. e., the Old Testament.

[235] About him see Steinschneider, *Arab. Literatur der Juden*, p. 37.

[236] כתאב אלכ̇ליקה̈ = Γένεσις.

---

[237] Sic! Cf. Jellinek's *Bet ha-Midrash*, VI, 156, line 4.

[238] The meaning of this exception is not quite clear to me.

[239] וליס פיה חכם; the translation is not certain.

[240] i. e., the Christians.

[241] אלאברץ!

[242] Read אלפנדקיה̈; St. Helena was a *Πανδόκεια* (stabularia); the form גילאני is very strange on account of the ghain for the spiritus asper. Graphically the gimel may be a misrestoration of a half-obliterated hē.

Account of (the doctrine of) the Trinity and incarnation. They say that . . .

. . . [Mark?][244] mentions his ancestors but does not give his (full) genealogy; so also John; they (both?)[245] mention the ancestors listed by Matthew and those listed by Luke. But this reveals an enormous discrepancy between these four (Evangelists). Namely, Matthew counts from the earliest to the latest and says: Abraham, Isaac, Jacob, Judah, Perez, Hezron (and so forth), in a natural line, until he comes to David; then he omits Nathan, to whom Luke traces (the lineage), and continues: Solomon, Rehaboam, Abiah, Asa, Jehosaphat (and so forth), listing the part of the earlier lineage mentioned by Luke,[246] and the genealogy of Joseph who sought the Mother of Jesus in marriage. Luke, however, lists the Biblical[247] line, i. e., from Joseph to Adam, and then also Hailai son of Matath son of Levi son of Malki son of Joseph son of Matetha son of Amos son of Nahum son of Kislai son of Nagid son of Maat son of Shimei son of Joseph son of Judah, and the further lineage. Thus, Matthew traces his genealogy from Solomon son of David to Jacob, whereas Luke traces his genealogy from them[248] to Nathan son of David. In such a way this lineage in both Gospels is not that of Jesus but that of Joseph who sought the Mother of Jesus in marriage. So here are three discrepancies: first, the disagreement of the two lineages; second, both are of Joseph (not of Jesus); third, according to the Gospels, the Mother of Jesus was engaged to Joseph and he did not come in unto her, but found her to be pregnant from the Holy Spirit, as Matthew and Luke say. On the other hand, we cannot find any mention whatever of Hailai, Jacob, and Matath, either in the twenty four (books of the Old Testament), or in the Jewish tradition,[249] and they are not known in genealogy. But the Christians fraudulently assert that Hailai was a man of them and the son of Nathan son of David, and that he was an (uterine) brother of Jacob son of Nathan, who was born to his[250] mother from Solomon;[251] that Hailai died without issue, so that his uterine brother Jacob came in unto his wife to establish an offspring for him. Thus came Joseph who was in such a way a son to both men: to Jacob by nature, and to Hailai by the law of the establishment of an offspring (for the dead brother). This is the statement of Daūd ibn Marwān al-Muqammiṣ; I have quoted it literally[252] in order that the absurdity and weakness of the doctrines of the Christians might become clear, in fact too clear and evident to require any detailed explanation.

---

[243] The translation is free; the Arabic is very clumsy; perhaps some words have fallen out.

[244] The translation of this paragraph is uncertain in many places, due to the lacuna at the beginning.

[245] ד̇אכרון is plural, but it cannot possibly refer to anyone except Mark and John, as far as it appears from the context. Plural for dual in colloquial Arabic is, of course, quite common.

[246] מתי is apparently a lapsus calami for לוקא.

[247] אלנאמוסיה̈.

[248] i. e., from the above line: Hailai son of Matath, etc.

Chapter VIIIb

REFUTATION OF THE DOCTRINES OF THOSE WHO CLAIM THAT JESUS SON OF MARY WAS INVESTED WITH PROPHECY AND PERFORMED MIRACLES

As for the followers of Jesus and those who believe in him, i. e. the Christians and no others, they attribute to him divinity, according to the information that reached us. The master of the Moslems,[253] at the time he announced his claim to prophecy, had his attention drawn to the unanimous belief of the Christians in the miracles of Jesus. But since he was no person accustomed to research and speculation, who would investigate the origin of Jesus's history, he acknowledged his miracles so as not to injure his own plans; for he feared lest he, too, should be called an impostor, if he should disavow it, as it happened in the case of

---

[249] אשמעה (so MS. B; MS. A has the arabicized form סמעה), literally hearsay (סמאע) is the Talmudic שמעתתא.

[250] i. e., Hailai's.

[251] by levirate?

[252] עלי ג̇התה.

[253] i. e., Muhammad the prophet.

Abū 'Īsā al-Iṣfahānī, whose story we have mentioned above. Therefore, although he did not yield to the Christians in regard to the recognition of Jesus's divinity, he, too, invested him with prophecy and also agreed with the Christians that he was born of no (mortal) father. In arguing in favor of Jesus's prophecy the Moslem theologians say: "We see that the Christians are so enormous a multitude that their number cannot even be computed; is it not reasonable that we should agree with them? Now, they assert that they have a tradition from their ancestors to the effect that Jesus son of Mary performed miracles, like reviving dead and restoring the sight of blind, etc., the like of which cannot possibly be performed unless by the direct intercession of the Lord of the worlds and by the hand of a (true) prophet. If this is so, then it is evident that Jesus was a (true) prophet sent from God." They say furthermore: "If someone should object to this, saying: 'But all those who have transmitted the traditions about Jesus's miracles have also transmitted (the doctrine) that he is divine and is one of the hypostases which constitute God, and that God personified Himself in his body; if they are to be trusted in regard to their tradition about his miracles (they are to be trusted also in regard to their traditions about Jesus's divinity),'—we shall reply: Thy objection is null and void, inasmuch as it[254] has no connection with our argument. Their tradition about Jesus's miracles is based solely upon the accounts of eye-witnesses, whereas the doctrine of (Jesus's) divinity is merely a matter which they derive by reasoning, analogy, and arguments produced by speculation. Thus the latter doctrine is not of the same nature as a fact ascertained by the testimony of eye-witnesses. Therefore, when we ask the Christians what is the proof (for their assertion) that Jesus performed signs and miracles they answer: '(It is true) for we have received it by tradition from our ancestors, generation after generation, to the effect that those who lived in his[255] time witnessed him performing it in their presence.' But if we ask them to prove that this[256] is one of the attributes of God (and

[254] Read ועארצ̇ת.

[255] i. e., Jesus's.

[256] i. e., performance of miracles.

that Jesus is for this reason divine), they do not mention any tradition or any testimony of eye-witnesses, but derive this doctrine merely by analogy and reasoning." To this I wish to answer thus:[257] Verily, you have misinterpreted the objection and diverted it from its (real) meaning, since that which you have just mentioned is not the (actual) objection proffered against you. But what was (really) said to you (is this): All those who have handed down the traditions about Jesus's miracles, i. e., the Christians, assert that the four disciples, i. e., Matthew, Luke, Mark, and John, were also prophets and have also performed signs and miracles. They claim the same also for Paul, namely that he was a prophet and that Jesus invested him with prophecy, furnished him with signs and miracles and sent him out (to preach); that it was he who converted the majority of the peoples, e. g., the Greeks, and others, to the Christian faith. Now those who witnessed the miracles of Jesus (are merely a very small group, since) Jesus lived only in Syria, whereas Paul visited the land of the Greeks and made a circuit of many (other) lands inviting the people (to become Christians); he used to perform miracles wherever he came, bringing the people under his influence in such a manner that they embraced the religion he was preaching to them. The traditionists of Paul are more numerous than the traditionists of Jesus. In fact, it was Paul who proclaimed the doctrine of the Trinity and announced that the Creator is one substance in three hypostases, Father and Son and the Spirit of God, and that Jesus is the Son of God and His sign, being one of the hypostases. Therefore, if the tradition of the Christians about Jesus's miracles is correct and they are to be trusted in it, then they are necessarily to be trusted also in their tradition about Paul's miracles. Moreover, the (tradition about the) miracles of Paul should, then, be (considered) even more trustworthy, since, according to the above statement, the number of the traditionists who handed it down is twice the number of those who transmitted the tradition about Jesus's miracles. If this is so, then the prophecy of Paul is beyond doubt and whatever he said is true; but then his doctrine about the Trinity and about God being one substance in three hypostases is also a true and good doctrine!

---

[257] וקאל להם; something like מאלף אלכתאב is to be understood.

If, however, they say: "But how is it possible that the doctrine of the Trinity should be true, as long as it is contrary to reason?", we shall answer: If so, then the man who taught it could not have been a (true) prophet or have performed miracles; it is also evident, then, that those who have transmitted these traditions about him are men upon whose testimony one cannot base any arguments; also, that those who assert that many people have witnessed these miracles and that the argument is based upon their testimony are evidently not speaking the truth. But if it is evident that those who attribute performance of miracles to Paul are liars, it is even more evident that those who attribute the same to Jesus are also liars, since they are much fewer in number. Thus we have shown that the doctrine of those who attribute prophecy to Jesus is false; but if the prophecy of Jesus and of others whom Abū ʿĪsā al-Iṣfahānī invested with it is proved to be false, then his own claims to prophecy must also be unfounded.

If, however, the Moslems will let alone[258] the traditions of the Christians, while arguing in favor of Jesus's prophecy, and will return to their statement that they believe in it merely on the basis of the words of their master, whose own prophecy is beyond doubt,[259]—in fact, the modern Moslem theologians assert even in regard to Moses that they believe in his prophecy on the sole basis of the statements of their master, but not at all on the basis of the Jewish and Christian tradition, although this is in contradiction with the opinion of their older theologians, like Abū ʿl-Hudhayl al-ʿAllāf[260] and Ibrāhīm al-Naẓẓām[261] and others.

---

[258] The text seems to be corrupt; something like תרך אלמסלמין אלאחתג̇אג̇ must have stood in the original.

[259] Al-Qirqisānī does not finish the phrase.

[260] Abū ʿl-Hudhayl Muḥammad ibn al-Hudhayl al-ʿAbdī al-ʿAllāf ("the fodder-merchant") was one of the foremost thinkers of the Muʿtazila school, ca. A. H. 135–226, i.e. A. D. 752/3–840/1.

[261] Abū Isḥāq Ibrāhīm ibn Sayyār al-Naẓẓām ("maker of pearl-strings"), a contemporary of the above thinker, died A. D. 845. Cf. Horten, *Die philos. Systeme*, 1912, pp. 189–241.

There were two reasons which forced the modernists to seek refuge in this theory. First, their reluctance to engage in dispute with the Jews, who insist that if they[262] admit that the Jewish traditions ought to be studied and can be adduced as authority for arguments, they must also admit that their[263] tradition about the perpetuity of the Torah[264] is also true, granting in such a way that the statement of their master (in this respect) is false. Secondly, their master asserted that he is mentioned in the Torah and that Moses foretold his coming. We all, however, say that this is not true, since we do not find it in the Torah. This forced them to deny the fact that he[265] himself recognizes (the holiness and authority of) the Torah, since he calls it and its people[266] to witness in his behalf in more than one place of his book.[267] We have dealt with this question in detail in our book which we have written against them. They even say: "The Torah which you have[268] is not the genuine original Torah, and the man Moses in whom you believe is not the same man as the one in whom we believe." When we ask them: Why do you think so? they answer just as we expect them to, their reply consisting of the very thing we blame them for; they say: "Because the true prophet Moses is the one who foretold (the advent of) Muhammad, and the true Torah is the one in which this is written. As soon as you say that in the Torah which you have this is not written, and that the man Moses in whom you believe has not foretold it, we learn that this Moses and this Torah are not the (true) ones." Yet in such a way they contradict, as we have shown above, their own principles and make their own master a liar, inasmuch as he declared this Torah to be true and called its people to witness in his behalf in many places (of the Koran). In addition so that they reject the evidence of

---

[262] i. e., the Moslem theologians.

[263] i. e., the Jews'.

[264] Muhammad and later the Moslem theologians asserted that the Jews have made changes in the original text of the Torah as given on Mount Sinai, and that therefore the Torah is no longer authoritative and is superceded by the Koran.

[265] i. e. Muhammad.

[266] i. e., the Jews.

[267] i. e., the Koran.

[268] Read אידיכם.

(uninterrupted) succession (of authorized leaders) and assert that the Creator neglected mankind from the time of the cessation of prophecy until the advent of Muhammad, leaving mankind without any (legal) authority or commands or prohibitions; for inasmuch as before Muhammad there were no (authoritative) traditions from (true) prophets, excepting the traditions of the Jews and the Christians, which according to them are unfit to be adduced as authority, there was (during that time) no (legal) authority or (authoritative) traditions from (true) prophets. Some of them are thereby compelled to assert that (during that time) people used to guide themselves in religious matters by their own judgment only. But we have already shown in the fourteenth chapter of this part that this doctrine is false and that it leads to (complete) abrogation of prophecy. We have also shown in the preceding chapter, in a way that will convince anyone who would examine our arguments, that the prophecy of their master is untrue from more than one aspect.

In regard to their assertion that "Moses in whom they[269] believe is not the true prophet Moses," the following story that has been told to us on their own authority ought to be recited to them: We have been told that a company of people was present at a reception held by one of the caliphs, say al-Ma'mūn[270] or any other, and the caliph issued in their presence a certain order; later they went out and separated. After a while they met in a certain place in a certain country and some of them said to the others: "Do you not remember that we have been on such and such a day of such and such a month in the year so and so in Bagdad at a reception held by the commander of the faithful 'Abd Allāh al-Ma'mūn, son of Hārūn al-Rashīd, father of Muḥammad al-Amīn son of Zubayda, and that he issued such and such an order?" The others, however, said: "We certainly have been present on that day, as you say; but as for the order which you assert he issued, he never did so; moreover, he issued an order exactly to the contrary, namely thus and thus." Is it to be inferred from this answer and from the fact that the two parties disagree and that each party claims the opposite[271] of what the other does that the commander of the faithful 'Abd Allāh al-Ma'mūn, son of Hārūn al-Rashīd, father of Muḥammad al-Amīn son of Zubayda, to whom each party ascribes whatever it ascribes, is not one and the same person? Or[272] is it rather merely evident that one of the parties is wrong, attributing to him something he never said? Even if they should assert that this case is not the same as the case (of Moses), the matter is so perfectly clear, that there is no need whatsoever to argue with them, since there is no one else (but Moses) known on earth whom all these facts and descriptions would fit. If, however, they should admit that both cases are alike—in fact it cannot be otherwise—and that the only trouble is that one of the parties attributes to him something he never said, we would say: This is what we also say, namely: there was at such and such a time, during the reign of (king) so and so a man from the descendants of Jacob, who was also called Israel, and from the tribe of Levi, called Moses son of Amram; his brother was called Aaron, and his sister Miriam. God spoke to him from the thorn-tree and sent him to Pharaoh and to the children of Israel with wonderful signs, e. g., the transformation of his staff into a snake, the whitening of his hand, the transformation of the water (of the Nile) into blood, the crossing of the (Red) sea, and all the other miracles mentioned in the Scriptures. God commanded him to[273] enjoin upon the children of Israel the observance of the Sabbath and abstinence from work on that day, the eating of unleavened for seven days, the (rite of) circumcision, etc. All these particulars (of the story of Moses) you grant us without contradiction. Then, we say that he laid down a permament (code of) law; you assert (in addition to that) that he foretold the advent of a certain man. Now does this assertion (of yours) imply that the one we were speaking about is not the same as the one you believe in? Or does it rather imply that one of us is attributing to him something (which is not true), either we or you? There is no other way out of this, and in this very fact[274] lies the destruction of this newly invented doctrine and the confirmation (of the fact) that Moses in whom we believe is the same man as the one they acknowledge, and that one of the two parties has been ascribing to him something which is not true. Now it is impossible that we should be the ones to make the false statements, since we are dispersed and scattered from the East to the West, and it is impossible that we all should (secretly) agree to deny that which is (supposedly) recorded in our (Holy) books.[275] If they say: "But it is the same case with ourselves, for we also are scattered from the East to the West, and it is impossible that we all should be liars," we shall answer: You do not lie in quoting the words of the man who said so; it is only that you quote the words of a person who made it up himself to impress (upon others) the truth of his own affair. If they turn again to false and artificial interpretations (of passages in the Old Testament), there has been enough of it already, so there is no need to add to it any more.

---

[269] i. e., the Jews.

[270] A. H. 198–218. i. e. A. D. 813–833.

---

[271] Read צׄד מא. .

[272] Read או.

[273] Read אן.

[274] Read ופיה.

Thus, the doctrine of Abū ʿĪsā al-Iṣfahānī and his claim to prophecy have been shown to be false, as well as the (claims to) prophecy of the two men[276] whom he acknowledged (as true prophets). As for Yudghān, i. e., the (so-called) "shepherd,"[277] who also pretended to be the Messiah, there is no reason to bother with him, since his affair is too clear and evident to need any mention.

We shall now turn to the refutation of those of the followers of Anan who believe in metempsychosis.

Chapter IX

ACCOUNT OF THE DOCTRINES OF THE QARAʿIANS

The only thing we know positively about their doctrines is that they use utensils of gourds. We do not know what their reason for it is. But judging by some other things that we have heard about them we think that it is possible that they agree with the Samaritans in regard to the impurity they may contract by coming in contact with any man (not of their creed); perhaps they think also that at the present time there is no possible purification for one who has come in contact with a dead body,[278] due to the lack of (ritually clean) water of purification,[279] and that all utensils touched by the hands of any man (not of their creed) are (forever) unclean; probably this is why they use utensils of gourds, for they themselves manufacture them for their own use. What confirms this conjecture is the fact that some theologians say about them that they never put anyone not of their creed in charge of anything pertaining to their sowing or harvesting; this is strange, too, and we do not know what their reason for it is. It is also said about them that they rest both on Sunday and on Saturday; this indicates that they incline to some extent towards the doctrines of the Christians. This is all I could find out about their doctrines; I have seen some of it in a book by one of the theologians, containing an account of (various) religious systems. I used to think that the Qara'ians appeared after Jesus and the Christians, until I had my attention drawn to a book by Daūd ibn Marwān al-Muqammiṣ, entitled "Book of fierce attack,"[280] in which he says that the religion of the Christians is a combination of that of the Sadducees and that of the Qara'ians; this indicates that the Qara'ians existed before the Christians. Inasmuch as I thought that the Christians appeared first I let the account of them precede the account of the Qara'ians.

---

[275] i. e. the advent of Muhammad.

[276] Jesus and Muhammad.

[277] Read אלראעי; cf. Harkavy, p. 284, lines 12–13.

CHAPTER X

ACCOUNT OF THE DIFFERENCES BETWEEN THE RABBANITES OF SYRIA AND THE RABBANITES OF BABYLONIA

The things in which they differ are about fifty in number; it is unnecessary for us to mention all of them; we wish only to mention the most important of them, such as cause each party to accuse the other of heresy, because it follows a different rule, since the differences existing between both parties are not inferior (in importance) to those existing between them both on one side and the Karaites and Ananites on the other. This also refutes their assertion that they are holders of the (true) tradition and that their customs come down directly from (the men endowed by God with) prophecy. Before we list their differences we shall mention their own words about it.

---

[278] Apparently they thought that all non-Qara'ians are as unclean as a dead body.

[279] מי נדה.

[280] כתאב אלצ̇ראה̈; the above is Bacher's translation. Professor Torrey suggests the translation of the title as "Book of earnest purpose."

The School of Hillel and the School of Shammai differed in (many) things; in some cases whatever the School of Shammai made weighty the School of Hillel made light, in others whatever the School of Shammai made light the School of Hillel made weighty. The Rabbanites say[281] that whoever practises according to the aggravations of the School of Shammai and the alleviations of the School of Hillel is a sinner; so is also a person who practises according to the alleviations of the School of Shammai and the aggravations of the School of Hillel; but the right way is to practise according to one of these systems (only), both in its aggravations and its alleviations, and whosoever inclines entirely towards one of these systems is praiseworthy. Even if their wickedness were evident from this passage only, it would have been sufficient; for they declare two contradictory systems to be both true and say that whoever adheres to (either) one of them pursues the right course!

One of their differences is that the School of Shammai forbids the killing of insects on the Sabbath,[282] whereas the School of Hillel permits it; the later (authorities), however, say: "The rule is according to the School of Hillel."

They differ also in the interpretation of the expression [Ex. 22.4]: "The best of his field:"[283] some say that this refers to (the field of) the one who suffered the damage, and that it is said "The best of his field" for the reason that in the fields and vineyards there are found thorn-trees as well as (good) crops, many plants of the kind of fire-wood and alfalfa-grass as well as good ripe fruits. Therefore, it is ruled that if anyone lets his cattle go free, and it "eats up" the choice of it he should be obliged to refund[284] the exact equivalent of what it ate up[285] and damaged. In such a way the expression "the best" should be connected with the preceding, i. e., "If it eats up the best of his field," "he shall pay" being an independent sentence. Others say that it refers to (the field of) the one who(se cattle) caused the damage.

---

[281] 'Er. 8b below.

[282] Shab. 12a.

[283] B. Ḳ. 6b–7a.

Another difference between the people of Syria and the people of Babylonia is that the people of Syria require for a virgin two hundred dirhems as dowry, and for a widow one hundred dirhems. The people of Babylonia fix the dowry at twenty five dirhems.[286] It necessarily follows that the people of Syria should consider the marriages of the people of Babylonia unlawful, since the latter do not furnish the required dowry in full. Or, if such a marriage is lawful, there should be no fixed amount of dowry; then what is the meaning of "two hundred dirhems?" In fact what they say in the Mishnah contradicts the dowry regulations of both parties, namely: "One may betroth a wife with a small coin or an equivalent of a small coin."[287] Now if it is allowed to betroth a wife by a single small coin, is it not clear that any dowry is thereby abolished, whether of twenty five (dirhems) or of two hundred, or any amount whatsoever?

The people of Babylonia do not allow a woman, whose husband died while she was nursing at the breast, to remarry before the expiration of two years; the people of Syria allow her to remarry after the expiration of eighteen months. It follows, then, that a child born to her[288] should be considered illegitimate by the people of Babylonia, since she had married unlawfully.

We have said above that the people of Syria consummate marriage by means of a finger; in the opinion of the people of Babylonia this is equivalent to fornication. Also, the people of Babylonia forbid a newly wedded man to repeat the intercourse before the expiration of seven days, whereas the people of Syria make no restriction whatsoever. Now if a child is born of such a cohabitation it is to be considered illegitimate, according to the people of Babylonia. On the other hand, if a woman has conceived on her wedding night the people of Syria have to consider her child illegitimate, since the consummation of marriage must be performed, according to them, by means of a finger only.

---

[284] יסלם = יְשַׁלֵּם, a peculiar Jewish-Arabic usage.

[285] אשעל = בִּעֵר, also a peculiar Jewish-Arabic usage.

[286] In both cases?

[287] Ḳid. 1.1; in Ket. 67a the minimum is fixed at fifty zuz.

[288] In the second marriage.

The people of Babylonia think that it is lawful to place a pot (with food) into the oven before the approach of the Sabbath[289] so that the food may get cooked during the Sabbath; the people of Syria forbid it; thus, in the opinion of the people of Syria, the people of Babylonia are deliberately profaning the Sabbath.

The people of Babylonia do not perform any ablutions after a nocturnal pollution or sexual intercourse, whereas the people of Syria wash themselves after these actions even on the day of Atonement, when no ablutions whatsoever are allowed; thus, in the opinion of the people of Syria, the people of Babylonia are forever unclean. One of the elders of the community[290] told me that he had seen some people in the Maghrib who never perform any ablutions after sexual intercourse.

I am listing all this merely because they completely deny it when they hear it, although it is true.

The people of Syria relieve themselves in water, whereas the people of Babylonia do so upon the (bare) ground.[291]

We have said above that the people of Babylonia allow a menstruating woman to do all the housework, like cooking, baking, etc.; the people of Syria forbid it; this is like the two preceding differences.

The people of Babylonia allow (carrying plain) myrtle(-leaves) on the Sabbath of the feast of Tabernacles, but forbid (carrying) them (inserted) in the lulab; the people of Syria do the contrary.

The people of Babylonia permit a person to weigh meat on a holiday, whereas the people of Syria absolutely forbid (so much as) putting it on the scales, be it even with the purpose of preserving it from rats. According to that, the people of Babylonia profane the holiday, from the point of view of the people of Syria.

---

[289] Shab. 3.1,—not a direct permission.

[290] אלג̇מאעה̈; it may be either the community of the Rabbanites, or that of the Karaites; probably the latter.

[291] Literally: stone.

The people of Babylonia dispose of the prepuce[292] in water, whereas the people of Syria bury it in sand;[293] thus, in the opinion of each party the circumcision of the other party is unlawful.

The people of Babylonia distinguish between a forbidden ewe and an allowed one[294] by examining the lungs, whereas the people of Syria examine the head.[295] One of the elders of Raqqa told (me) that he had been in Jerusalem and that a ewe was examined there first at the head and declared to be forbidden, then at the lungs and declared to be allowed, and that with another ewe the case was (exactly) to the contrary. Thus, in the opinion of each party the other party is eating forbidden food. Likewise, the people of Babylonia do not allow a person to slaughter an animal until eight days after it has been born, whereas the people of Syria slaughter such an animal (even) on the very same day; thus, in the opinion of the people of Babylonia the people of Syria eat food absolutely forbidden.

The people of Babylonia do not allow one to betroth a woman during the Jubilee year, whereas the people of Syria allow it; thus, if a woman of the people of Syria marries during such a year her marriage is in the opinion of the people of Babylonia unlawful and her children (from this marriage) illegitimate.

The people of Babylonia think that it is lawful to carry money on the Sabbath, whereas the people of Syria forbid one (even) to come near to it; thus, according to the latter, the people of Babylonia profane the Sabbath.

The people of Babylonia observe (each) holiday for two days, whereas the people of Syria observe it one day only; thus, in the opinion of the people of Babylonia the people of Syria profane the holidays and transgress the commandment "Thou shalt not diminish [from it]," whereas in the opinion of the people of Syria the people of Babylonia observe feasts not enjoined by God and transgress His commandment "Thou shalt not add thereto."

[292] After circumcision.

[293] Cf. Tūr Yōreh Dē'āh, Hilkōt Millāh, 265.

[294] After slaughtering.

[295] Sic!

We have taken and learned all the above differences from them; it is to be found in their own books. One of them collected all this in a special work, and from this book we have taken our information about it. So do ye not pay any attention to their insolent denials.

CHAPTER XI

ACCOUNT OF THE DOCTRINES OF ABŪ ‘ĪSĀ, I. E., OBADIAH, AL-IṢFAHĀNĪ

We have said above that Abū ‘Īsā pretended to be a prophet and that the miraculous thing about him was, according to his followers, the fact that although illiterate and unable to write or read, he produced books, which is impossible unless through (the gift of) prophecy. As for his teaching and doctrines, he prohibited divorce as do the Sadducees and the Christians. He prescribed seven prayers daily inferring this from the saying of David [Psalms 119.164]: "Seven times daily do I praise Thee." He also prohibited meat and intoxicating drinks, not on the authority of the Scripture, but asserting that God commanded him to do so by direct revelation.[296] He greatly esteemed and honored the Rabbanites, until he made them stand on an equal footing with the prophets. According to the Rabbanites, he asserted that God commanded him to pray the eighteen (benedictions) and the Shema‘-prayer. He did this only with the purpose of drawing to himself the hearts of the common people and the general body (of the sectarians?); for this reason the Rabbanites and the general body (of the sectarians?) do not repudiate the Isunians and do not look upon them with the same eyes as they look upon Ananites and Karaites. I asked Ya‘qūb ibn Ifrā‘īm al-Shāmī: "Why do you favor the Isunians and why do you intermarry with them, although you know that they attribute prophecy to men who had nothing to do with it?" He replied: "Because they do not differ from us in the observance of holidays." This answer of his indicates that, according to them,[297] manifestation of (complete) unbelief is more pardonable than display of (petty) differences in the observance of holidays which they themselves invented. Abū 'Īsā acknowledged the prophecy of Jesus son of Mary and of the master of the Moslems; he asserted that each one of them was sent (by God) to his own people, and he enjoined (upon his followers) the reading of the Koran and of the Gospels and the study of their commentaries. He said that the Moslems and the Christians should each observe the religion they now adhere to, just as the Jews should observe the religion they now profess.[298] It was merely the preservation of his own affair and the protection of his own teaching that prompted him to recognize the prophecy of these two men, as well as the safeguarding of his own claim to prophecy; for had he disavowed these two men, the people would very soon have disavowed him, too; thus, he hoped that by recognizing these two men he would bring his own affair to perfection. But he was disappointed in his hope and his expectation was frustrated. We will show the falseness of his claims later.

---

[296] Literally, by way of prophecy.

[297] i. e., the Rabbanites.

CHAPTER XII

ACCOUNT OF THE DOCTRINES OF YUDGHĀN, CALLED "THE SHEPHERD"

Yudghān also pretended to be a prophet; his followers assert that he was the Messiah and that he did not die; they expect him to return (any moment). The Yudghanites prohibit meat and intoxicating drinks and observe a great many prayers and fasts. They assert that Sabbaths and holidays are at the present time no longer obligatory, but (should be kept) only as memorial days. Some of the Karaites share with them the same opinion; we will mention it later.

CHAPTER XIII

ACCOUNT OF THE DIFFERENCES OF THE EXILARCH ANAN AND HIS FOLLOWERS

He allowed the carrying of light loads on the Sabbath; this is contained in his saying: "Burden[299] means only that which is carried on the shoulder;" such is his saying as it stands. Some of his followers, however, assert that he meant by it the carrying (of loads) inside of houses, that is to say, he meant that people should not be permitted to carry (anything) on their shoulders inside their houses. But the virtual meaning of this saying does not imply that which these men assert; we shall comment on it in its (proper) place. He did not allow any recitation of prayers except in a special place that he called "courtyard."[300] He asserted that whosoever eats during the seven days of Passover unleavened wheat bread is just as (sinful as) if he had eaten leaven.[301] He required that circumcision should be performed with scissors only; he ordered (his followers) to use at the circumcision two strips of linen, a large one and a small one, (soaked) with walnut oil. Whoever differed in any of these things was considered by him uncircumcised. Likewise, he thought that a man circumcised by a person who had not been operated upon in the same manner cannot be considered circumcised, and has to undergo a second operation. He required that circumcision of adult persons[302] should take place on the eleventh day of the month only, and not on any other day; likewise, that a woman who wishes to embrace the (Karaite) faith should do this on the eighth day of the month. He required that the searching for the young ears should be done on the fourteenth day of Shebat, and asserted that Shebat is the month of intercalation, and not Adar. The literal meaning of one of his sayings indicates that he allowed a person (to marry) the paternal aunt and the maternal aunt, i. e., the one who is not on the father's side; his followers, however, completely deny this (regulation).[303] He permitted marrying the daughter of the father's wife,[304] provided that the father has no children from her, i. e., from the mother. He asserted that the passage of the Scriptures [Lev. 18.18]: "A wife to her sister" means a woman and the daughter of her sister. He asserted that the passage [ibid., 15.8]: "And if he that had the issue spit upon the clean one" (implies) that women are made thereby an exception, so that if he that had the issue spit upon a (ritually) clean woman she does not become unclean.[305] He established a fast of seventy days, from the thirteenth day of Nisan to the twenty third day of Siwan; he also established a fast every seventh day of a month, also during both days of Purim.[306] He prohibited cohabitation during daytime; he also forbade having more than one cohabitation in a night and a day. He forbade cohabitation with a pregnant woman before the expiration of three months after the childbirth. When the fifteenth of Nisan fell on a Sabbath he used to transfer the celebration of the feast (of Passover) to Sunday, i. e., the sixteenth; likewise, in the case of the feast of Tabernacles. He did not acknowledge any impurity as regards fluids. He asserted that a vessel cannot contract impurity from another vessel. He denied any impurity contracted through contact with a dead body at the present time, and he did not acknowledge impurity due to nocturnal pollution. He asserted that if rats or (any of) the other eight[307] (kinds of similar impure animals) get killed, their (specific) impurity should be considered less important than their impurity as dead bodies. He asserted that a dead corpse of (each of) these eight (kinds of animals) has a "resting place"[308] which should be treated in the same way as the couch of a menstruating woman. He made impurity valid only in case of persons who purposely draw near to (the impure object). He asserted that a rat running about upon the ground does not inflict any impurity. He asserted that an unclean person performing the ablution not from a vessel does not become clean. He allowed menstruating women to stay in the "camp,"[309] to throw vegetables in a cooking-pot and to kindle the fire beneath it. He did not consider a man clean according to the full requirements of the law, if he differed from him even in a single regulation. He asserted that some impurities can affect only persons (at least) twenty years old, whereas others may affect even children five years old. He asserted that the young of clean cattle, having died before it became eight days of age, does not inflict impurity. It is said about him that he believed in metempsychosis and composed a book about it; besides, we have seen some of his followers who also profess the same belief. We shall mention the sayings of those who believe in metempsychosis and in repeated existence[310] and refute them later.

---

[298] Probably meaning that all religions are true, and none is better than the other.

[299] מַשָּׂא.

---

[300] חצר.

[301] As Harkavy remarks, Anan apparently thought that wheat bread, even if unleavened, is too luxurious a food to serve as a symbol of the "bread of poverty" that the Jews had eaten upon their departure from Egypt.

[302] Apparently proselytes.

[303] Literally, they flee from it with a hasty flight.

[304] i. e., the daughter of the step-mother.

---

[305] Anan apparently inferred this from the masculine gender of "the clean one" in the verse referred to.

[306] Literally, of (the reading of) the Scroll (of Esther).

[307] Rather seven; cf. Lev. 11.29–30.

[308] i. e., the place on which such a corpse lies becomes unclean also and must be cleansed.

[309] אלמחנה, probably in a general sense: he did not require any severe isolation of menstruating women.

CHAPTER XIV

ACCOUNT OF THE DIFFERENCES OF BENJAMIN AL-NĀHAWANDĪ

He asserted that the Creator created nothing but a single angel, and that it was this angel who created the entire world, sent out the prophets and commissioned the messengers, performed miracles and issued orders and prohibitions; and that it is he who causes everything in the world to happen, without (the interference of) the original Creator. He asserted that levirate is obligatory only in regard to a female slave.[311] He asserted that the passage of the Scriptures [Deut. 21.15]: "And if the first-born shall be of the unloved wife"[312] means that even if the favorite wife has given birth first her son must not be considered the first-born, but the primogeniture must belong to the son of the unloved wife, whether he is born first or not, for in either case they are both first-born[313] children (to their respective mothers). He asserted that the passage of the Scripture [Ex. 22.1]: "If the thief is found in a hole[314] and is beaten and dies" means in any kind of a hole, even if it was an old hole in a ruined building, which he did not dig out himself. He asserted that the passage of the Scriptures [Deut. 23.16]: "Do not surrender a fugitive slave" means that even if a slave belonging to one of the children of Israel has fled from him to thee, thou hast no right to surrender him to his master. He prohibited marriage with a woman nursing at the breast. He made (all) the laws obligatory upon children as soon as they begin to talk. He allowed (his followers) to fix the beginning of all months by calculation, with the exception of the months of Nisan and Tishri, the beginning of which he permitted them to fix only by the appearance of the new moon. He thought that the killing of birds should consist of both slaughtering and wringing (the neck).[315] He asserted that if a female slave has had intercourse with a man in a deserted place(?)[316] she shall not be put to death, even if it happened with her consent. He asserted that a dead (foetus) coming out of the womb does not inflict impurity, since impurity can be inflicted only by that which dies in the open air. He asserted that only a grave situated outside (of a house[317]) inflicts impurity upon anyone who comes near to it, whereas a grave situated inside of a house does not inflict impurity upon anyone who draws nigh to it. He asserted that in case of a garment of a menstruating woman which served her as night-clothes or day-clothes, a man coming near to it while it is not on her becomes unclean and must (bathe and) wash his own clothes; if, however, he comes near to it while it is on her he must only bathe, nothing more. He asserted that the time of twilight does not receive impurity, i. e., during this period of time a person cannot become unclean.

---

[310] תכריר.

[311] Harkavy (p. 268) overlooked the particle אנמא and construed this phrase as meaning that levirate is obligatory *also* in the case of a female slave; no wonder that he had to say that he does not understand what Benjamin meant by it. But the meaning is quite clear: since the *ḥaliṣah* is a more or less humiliating ordeal for the brother of the deceased (cf. Deut. 25.5–10, and especially verse 9) he apparently thought it improper to have a free man suffer humiliation from a bond-woman; on the other hand, theoretically, a widow whom her brother-in-law refuses to marry becomes through the *ḥaliṣah* ordeal free to marry whomsoever she pleases, which would be impossible in the case of a slave-woman.

[312] Read here and below שנואה.

---

[313] Literally, rupting the womb.

[314] This is how al-Qirqisānī understands the Hebrew word מחתרת, as is proved by the following נקב and ינקבה; the interpretation now accepted is "act of breaking in."

[315] Lev. 1.15 requires wringing of the neck only.

[316] פי אלצחרא.

[317] In a broad sense, including the courtyard.

CHAPTER XV

ACCOUNT OF THE EVIL DOINGS OF ISMĀʻĪL AL-ʻUKBARĪ

Ismāʻīl al-ʻUkbarī denied the Ketīb[318] and the Qerī and asserted that the Scripture must be read just as it is written; a contradictory saying, however, is attributed to him to the effect that he asserted that some things in the Scripture were not (originally) as they are now written. For instance, the passage [Gen. 4.8]: "And Cain said to Abel," he said that after this there was written: "Come, let us go out in the field;" (also about the passage) [Ex. 20.18]: "And all the people saw the voices," he said that it was (originally written) "heard the voices," since voices can only be heard and not seen. We have said above that this opinion is held also by the Samaritans, so perhaps he heard it and took it over from them. He said that the passage [Ex. 16.35]: "And the children of Israel have eaten the mannah" should be read "will eat," since at the time of this passage they had not yet eaten it for forty years. Also about the passage [Gen. 46.15]: "The number of his sons and daughters was thirty three," he said it (really) was thirty two, so that this is a mistake of the scribe. According to him, the time of the birth of the new moon, which is the time of its separation from the sun, should be considered the beginning of the (new) month and at that time the prayer and the sacrifice[319] should begin, even if it precedes the sunset by an hour.[320] He allowed consuming on the Sabbath foods prepared on the Sabbath by people of other faiths, e. g., roasted egg-plants, or fruits plucked on the Sabbath, etc. He is the author of many (other) sayings that are harmful, shameful, and absurd to the utmost degree. Yet in his writings he treats Anan in the most insulting manner, attributing to him the stupidity of an ass. We have said above that he commanded his followers to write upon his tomb: "The chariot of Israel and the horsemen thereof."

---

[318] Read כתיב.

[319] Of the ritual of the first of the new month.

[320] The Semitic twenty four hours begin with sunset.

CHAPTER XVI

ACCOUNT OF ABŪ 'IMRĀN AL-TIFLĪSĪ AND MALIK AL-RAMLĪ

We have said above that neither one of them composed any book of laws. They differed from the general body (of the sectarians?) only in a few (minor) things, e. g., the (fixing of the) Pentecost on Sunday, the prohibition of the fat-tail and of the root of the tail[321] and (the prohibition of marrying) the daughter of the brother and the daughter of the sister, etc. As for al-Tiflīsī, he also considered the time of the separation (of the moon from the sun to be the beginning of the new month), just as Ismā'īl (al-'Ukbarī) did, but he differed from him inasmuch as he fixed the beginning of the month on the beginning of the day on which the separation takes place. He is the author of (a book of) replies to questions submitted to him, as he asserted, by Ḥayyawayh;[322] he is also the author of a pamphlet[323] on the admissibility of (eating) meat. As for Malik al-Ramlī, it is said that he stood up on (the location of) the Temple (in Jerusalem) and took an oath to the effect that cocks used to be sacrificed upon its altar, i. e., the altar of God. This is an action of a stupid person.

CHAPTER XVII

ACCOUNT OF THE DIFFERENCES OF MISHAWAYH

This is also one of the stupid dissenters. He permitted (the consumption of) the fat of the daily sacrifices; I, as well as other people, thought that he was the first to hold this opinion, but one of the elders of the Ukbarites informed me that he took it over from some of the people of Jibāl;[324] this is not improbable, for many (absurd) things are invented among the people of Jibal;

---

[321] Read ואלעכוה̈ (Rosen).

[322] This is probably the correct pronunciation of this name; it occurs in the Jewish sources in a shortened form חיוי. Ḥayyawayh al-Balkhī (of Balkh in Persia), called by his opponents al-Kalbī ("the dog-like"), is known only through the writings of Saadiah al-Fayyūmī, with whom he had a heated controversy. Fragments of a large treatise by Saadiah against Ḥayyawayh were recently (1915) published by Professor Davidson.

[323] אוראק; literally, leaves.

[324] The Arabic name for the ancient Media.

Mishawayh, then, merely published it and spread it, and argued in favor of it. Mishawayh used to assert that Pentecost must fall on Sunday, but he did not know on which Sunday; this is also the opinion of some of the people of Basra, but he differed from them inasmuch as he celebrated the feast on the same day with the general body (of the sectarians?). He asserted that the feast of Passover must always be(gin) on Thursday, so that the day of Atonement might fall on the Sabbath, since it[325] is called [Lev. 23.32]: *Shabbāt Shabbātōn*, meaning, according to him, a double Sabbath, one the (regular) Sabbath, and the other the (Sabbath of) Atonement. He was in doubt as to how to fix the beginning of months, since he could not decide what system to adopt. It is said that he used to say to his followers: "All money is unreliable; stick, then, to the counterfeit coin that you have on hand!"—he meant the festivals of the general body (of the sectarians?). He asserted that no sacrifices whatsoever should be offered during the Sabbath, and that the passage of the Scripture [Num. 28.10]: "The burnt offering of each Sabbath on its Sabbath,"[326] means "for its Sabbath," so that it was offered before the Sabbath for the Sabbath. He asserted that everywhere the direction (for prayer) should be towards the West, excepting those who are in Egypt and in the Maghrib, who should turn during prayer towards Jerusalem.[327]

Chapter XVIII

ACCOUNT OF THE DIFFERENCES OF DANIEL AL-DAMAGHĀNĪ

First, he was opposed to speculation by means of pure reason, and he despised its devotees; this is to be found in more than one place in his writings. He did not have the same idea of the angels as the people of Israel have, that is to say, that they are living beings endowed with the gift of speech, who are being sent out on missions in the same way as the prophets. On the contrary, he asserted that this word of ours, "angel, angels," denotes the bodies by means of which God does his doings, e. g., fire, clouds, winds, etc. Some people attribute to him another saying in regard to this matter, and I will mention it and refute it later. He prohibited the blood of fish, and he did not allow (the eating of) any locusts, except the four kinds mentioned (in the Torah) by their (special) names. He forbade sexual intercourse during (the latter part of?) the night, lest one should miss the (morning-) prayer. He admitted that (the laws concerning) contraction of impurity through contact with a leprous person are still in force. It is said about him that he used to say that laws are obligatory (only) upon persons (at least) twenty years old. He prohibited some things during the Sabbath,[328] e. g., washing the hands with alkali, etc. He forbade (lighting) lamps during the nights of holidays, just as[329] the general body (of sectarians?) forbid it during Sabbath-nights. He asserted that the passage of the Scripture [Lev. 1.15]: "And he shall wring its neck" refers to an action posterior to the slaughtering (proper).[330] It is said about him that he used to accept the testimony of Moslems concerning the appearance of the new moon.

---

[325] i. e., the day of Atonement.

[326] בְּשַׁבַּתּוֹ.

[327] i. e., towards the East.

These are all the doctrines of the dissenters who appeared (among the Jews) down to the present time, according to the information which we have received. Some of these sects have disappeared, e. g., the Magharians and the Sadducees; likewise, there are left no more of the followers of Ismā'īl al-'Ukbarī, and at the present time no person versed in speculation inclines towards his teaching. As for the Ananites, they are now very few in number, and their number is constantly decreasing. Of the followers of Abu 'Īsā al-Iṣfahānī only about twenty persons are left in Damascus. A small number of the Yudghanites still remain in Iṣfahān. On the other hand, among our coreligionists disagreement has greatly increased. We shall proceed now to list all their differences, lest we should leave unmentioned anything one should be informed of.

---

[328] Such as are generally allowed.

[329] Expunge אלא.

[330] Cf. the similar opinion of Benjamin al-Nahāwandī, chapter 14.

Chapter XIX

ACCOUNT OF PAST AND PRESENT DIFFERENCES AMONG SUCH OF THE KARAITES AS DO NOT BELONG TO ANY OF THE SECTS MENTIONED ABOVE

Some of them forbid ablutions from impurity during the Sabbath, others do not allow washing the face during the Sabbath. Some of them forbid one to bring in trays (with food) or to make the bed on the Sabbath; when anyone (of them) wishes to eat he goes to the place where the food is kept. Others allow the bringing in of trays and the making of the bed on that day, but forbid one to remove them, as the serving of a tray (with food) and the making of the bed are necessities of the Sabbath, whereas their removal is not a necessity (which cannot wait). Some of them think that it is unlawful to put on a trousers-band on the Sabbath. Some allow one to prepare on the Sabbath for use after the Sabbath all that which is allowed to be prepared on the Sabbath for use on the same day, e. g., cooling water, etc.; this is the opinion of some of the people of Bagdad. Some of them do not allow keeping food hot until the approach of the Sabbath, but let it get cold before the Sabbath comes in; they assert that if it is left hot some (internal) changes, expansion and contraction, take place in it during the Sabbath; this is the opinion of some of the people of Tustar, but others deny it and even allow the preservation of hot food in straw for use on the Sabbath. Some do not allow cooking or baking on any of the holidays with the sole exception of the feast of Passover; they assert that the exception applies to this feast only, and not to any other. I have been told that there appeared in Tustar some people who allow on holidays only that which is allowed on the Sabbath; they assert[331] that the passage of the Scriptures [Ex. 12.16]: "Only what is to be eaten for every one" corresponds (exactly) to the passage [ibid., 16.25]: "Eat it to-day."[332] Some of them[333] begin the "(month of the) fresh ears" (with the appearance) of (any kind of) green herbage, whereas others do not begin it until (fresh) garden-cress is found all over Palestine; others begin it only when (at least) one piece of ground becomes ready for harvest;[334] still others begin it even when only a handful of corn is ready for harvest. Some of them think that it is unlawful to go out of one's dwelling during the Sabbath, others think that it is unlawful to remove even an inanimate object[335] from the place where it lies to another place (during the Sabbath), even if there is no separation or distance between the two places; some, however, allow it. Some of them allow putting on a seal-ring on the Sabbath, others forbid it on the Sabbath as well as on holidays. Some of them allow the acceptance of even a single person's testimony concerning the appearance of the new moon, others do not receive the testimony of less than two witnesses. Some of the people of Bagdad fix the time of the "month of the fresh ears" on the basis of (the growth of grain in) a certain place in Bagdad; they assert that it[336] was tested and was found to be the same as (the time of the growth of grain in) Palestine.[337] Some of them (fix the beginning of the new month in the following manner:) if they look out for the new moon on (the night of) the twenty ninth and do not see it, but then see it in the (following) daytime, they fix the beginning of the (new) month on that day;[338] others think that this is unlawful. Some of them follow the exilarch[339] in adding a day to both the feast of Passover and the feast of Tabernacles, others follow him in regard to the feast of Passover, but not in regard to the feast of Tabernacles. Some of them

---

[331] Read ויזעמון.

[332] The first passage concerns the feast of Passover; the second deals with the mannah gathered on Friday which is to be preserved and eaten during the Sabbath. Apparently from the similarity of the expressions they inferred that the same laws govern the Sabbath and the holidays.

[333] Evidently, the Palestinian Karaites.

[334] I point in line 28 (p. 317) *al-rutb*; in line 29 Harkavy's הרף is, as Baron Rosen remarks, impossible, but the latter's emendation הדף gives no help; I propose to read חרף "a certain grain resembling mustard" (Lane, s. v.), or, more definitely, "cresson" (Dozy, s. v.), garden-cress, which is, as an early spring annual, well fitted to serve as the basis for the calculation of the "month of the fresh ears." For קראח, sown field, "plantation," see Dozy, s. v.

[335] מסבת; the translation is uncertain, and the Arabic is very clumsy.

[336] i. e., the time and the speed of the growth.

[337] The translation is uncertain; the text reads: אנה קד עיר ד̇לך ואנה יכ̇רג̇ עלי ארץ̇ אלקדס.

[338] i. e., on the night just passed, since the Semitic twenty four hours begin with sunset.

[339] This is probably Anan; cf. chapter II, paragraph 11.

follow Anan also in prohibiting circumcision on the Sabbath, although most of them allow it. Some of them see nothing unlawful in a person's failure to eat any unleavened bread during the seven days (of Passover), provided that he has not eaten any leavened either, whereas others think that it is obligatory to eat it each day (of the feast). Some of them assert that the twilight time belongs entirely to the (preceding) daytime, whereas others insist that it all belongs to the morrow; still others assert that it belongs both to the (preceding) daytime and to the morrow, as Anan says. Some of them think that the Sabbath expires with the sunset, whereas others assert that the Sabbath ends only with the disappearance of daylight. Some of them allow one to read on the Sabbath any writing other than Hebrew, others forbid it. Some of them allow the consumption in the exile of meat of sheep and cattle, others forbid it. Some of them allow us to eat fish that had died in the hands of people of different creed, others forbid it. Some of them allow us to consume a whole boiled kid, others forbid it, for they assert that its fat gets cooked with it. Some of them allow us to consume (meat of) animals slaughtered by members of the general body (of sectarians?), whereas others forbid it. Some of them allow poultry, some forbid it, and some say that they do not know whether it is lawful or not. Some of them allow us to consume eggs of clean birds, others forbid it. Some of them forbid (the use of the fat of) the belly[340] and of the anus,[341] i. e., the hind parts.[342] and also the fat of the lungs; all this in addition to all the kinds of fat (forbidden by the Torah); this is the opinion of some of the people of Basra and Fars, but others do not forbid it. Some of them allow a person to receive medical treatment from people of different creed, provided that the treatment takes place in the presence of the patient;[343] others forbid it. Some of them acknowledge only one intermediary in the communication of impurity, others acknowledge many intermediaries, still others recognize no

[340] Read מכער (Rosen).

[341] כנתה̈, an arabicized form of the Talmudic כנתא.

[342] דוארה̈, literally, round parts.

[343] The meaning is, probably, that the patient should insist on having the medicine prepared before him to be sure that no forbidden foodstuffs have been used.

intermediaries whatsoever. Some of them require a daily noon-prayer, others require such a prayer on fast-days only. Some of them assert that if (the first night of) Passover falls on a Sabbath night the feast should be transferred to the next month. Some of them think that it is unlawful to use hot water in ablutions from impurity, others think that it is lawful.[344] Some of them allow the performance of ablutions from impurity only with stagnant water, whereas others do it only with spring-water. The above mentioned Karaites of Basra assert that the feast of Pentecost must fall only on Sunday, but they do not know on which Sunday; some of them assert that it is no longer obligatory, others assert that all the holidays are no longer obligatory, but ought to be kept merely as memorial days. Some of the Karaites of Syria assert that on a self imposed fast-day one may abstain from a single kind of food only. Some of the Karaites of Khorasan do not recognize the Ketib and the Qeri and read (the Torah) just as it is written; some of these Karaites do so even with the (Holy) name which is written yod-hē; they assert that whoever reads it as (if it were written) alef-daleth[345] is a heretic. Among the Karaites of Khorasan and Jibal there are some who assert that the promised Messiah had already come and passed away, also that the temple (which the Jews hope to build) is the one built by Zerubbabel and that there is going to be no other. Some of these Karaites also deny the resurrection of the dead and assert that whatever the Scripture says about it (really) means the restoration of the (Jewish) people from the captivity and humiliation. Some of the people of Bagdad assert that Enoch and Elijah died, for it is impossible that they should have ascended to heaven. Among the people of Basra and Tustar there are some who assert that it is unlawful to put on sandals or boots on the Sabbath without any (urgent) need, also to put on more than a single shirt or an over-cloak[346] or any other piece of clothing for which there is no urgent need, like a girdle, etc. Some of them allow one to extinguish a fire on the Sabbath if one had forgotten to do so before the Sabbath, in fact they think that it is obligatory;

---

[344] One לא is to be expunged.

[345] i. e., אֲדֹנָי.

[346] The second אלנעל seems to be a dittography.

likewise, they assert that a person must stop the water which irrigates the fields on the Sabbath if he had forgotten to stop it before the Sabbath; for the same reason they allow to stop the mills[347] on the Sabbath, lest they should be grinding on the Sabbath. Strangely enough, they allow, in fact they require, working and moving about during the Sabbath and forbid any recreation and rest. In some doubtful things they disagree, some prescribe them and some do not. They disagree in regard to the question whether a major impurity absorbs a minor one, some think it does, and some think it does not. They disagree in regard to the question whether a dead body renders a house unclean, some think it does, and some think it does not. They disagree in regard to the case of a man who failed to perform an ablution at the time prescribed for it by the Scripture: some allow him to perform this ablution at any time, whereas some allow it only at a corresponding time (of the day). They disagree concerning the duty of the proselyte to sit in the booth,[348] some think it is obligatory, others think it is not.

These are the differences that I could remember. The matter becomes worse day by day. Perhaps some of our coreligionists, upon reading this, will blame us for mentioning these differences, since some of the Rabbanites may use them as a counter-argument whenever we blame them for the differences between the people of Syria and the people of Babylonia. But let it not trouble your hearts, neither should you pay any attention to it. For it is they whom this accusation of contradiction fits, since they assert that all they have on hand had been received from (men of) prophecy. But were it really so, no controversy whatsoever should have arisen; thus, the very fact of this controversy contradicts their assertion. We, however, arrive at our knowledge (of the laws) by the mere deduction of our reason: since this is so, it cannot be denied that controversy may possibly arise. We will mention later the proofs adduced by various dissenters both for and against the necessity of speculation of this kind. Now let us conclude this part with (the help of) the might and power of God. Blessed be the Lord forever. Amen. Amen.

[347] Evidently, water-mills.

[348] Erected for residence during the feast of Tabernacles.

ADDENDA

To p. 319.—Add to bibliography:

The fifteenth chapter of the third part (against the Moslems), by Israel Friedlaender, in the *Zeitschrift für Assyriologie*, XXVI, 1912, pp. 93ff.

The twenty-second and twenty-third chapters of the fourth part (on the literal and allegorical interpretation of the Bible), by Poznanski, in the *Kaufmann Kohler Studies*, 1913, pp. 253ff.

The thirtieth chapter of the eleventh part (on Ya'qūb ibn Ifrā'īm al-Shāmī) and the twentieth and twenty-first chapters of the twelfth part (on slaughtering), by Poznanski, in the *Kaufmann Gedenkbuch*, 1900, pp. 182ff.

Since this paper was written (1927), we have secured the cooperation of Yale University and of the Kohut Memorial Foundation for the publication of the complete text of the "Book of Lights." It will form part of the *Yale Oriental Series*.

To note 21.—Or: "claimed to have it as a tradition (from his predecessors)."

To note 37.—Or Hai ben Nahshon, gaon of Sura, 889–896.

To note 38.—The correctness of this statement has been questioned (cf. Ginzberg, *Geonica*, I, pp. 158–9; Davidson, *Mahzor Yannai*, pp. xliv—xlv) on the following grounds: 1. the Karaite Yūsuf al-Bāṣir, in his *Kitāb al-Istibṣār*, quoting this very passage, reads "from the Nabatean into the Arabic;" 2. a Rabbanite gaon would hardly try to popularize a Karaite work; 3. the Jews at that time understood Aramaic as well as, or even better than, Hebrew. The first objection is meaningless, since it is fully nullified by the second; besides, a Karaite would hardly call the Aramaic language Nabatean. The second and third objections presume that Hai and his father prepared their translation for publication broadcast, and not as a mere source-book for their own private use and study; there is no ground for such a presumption, especially as such private source-books were widely used by scholars and students of the Moslem world.

To note 39.—Harkavy (*Studien und Mitteilungen*, V, 1891, p. 108, note 4) thinks that חזאנה̇ is an arabicized form of חַזָּנוּת, which he explains as equivalent to פיוט, without, however, giving documentary evidence of such a usage. Until such evidence is furnished it is safer to accept the obvious derivation from the Arabic חזן; חזאנה̈ is, then, a sad, melancholy poem, an elegy (Latin *triste*, pl. *tristia*).

To note 335.—Since this translation was made, I have had an opportunity to examine the use of the word מסבת in the fifth part of the Book of Lights, dealing with the Sabbath laws. There can now be no further doubt of the meaning of this word, as used by al-Qirqisānī; it means a person, a thing, or a place subject to the laws governing Sabbath. The translation of the passage should, accordingly, read as follows: Others think that it is unlawful to remove (anything) from one place to another, also (situated within the area) governed by the laws of Sabbath, even if there is no separation or distance between the two places.

RASHI'S VIEW OF THE WEAK, ע"ע, AND פ"ן ROOTS

WITH SPECIAL REFERENCE TO THE VIEWS OF MENAḤEM B. SARUK AND DUNASH B. LABRAT

HENRY ENGLANDER, Hebrew Union College, Cincinnati, Ohio

RASHI knew no Arabic, hence the literature in that language was not available to him. The only works of the Judeo-Arabic school dealing with lexicographical and grammatical material that Rashi knew, were those composed in Hebrew by Menaḥem b. Saruk and Dunash b. Labrat.[1] R. knew nothing of the epoch making work of Judah b. David Ḥayyuj who discovered the triliterality of the weak and ע"ע roots. He likewise knew nothing of the remarkable grammar and dictionary of Jonah Ibn Janaḥ composed in Arabic and constructed on the foundation laid by Ḥayyuj. Arabic words cited by R. were undoubtedly taken by him from secondary sources.[2]

R.'s indebtedness to the works of M. and D. for many of his grammatical and lexicographical comments is evidenced by his frequent reference to them with or without explicit mention of them.[3] R. evidently had carefully examined M.'s dictionary and the criticisms of it by D. For, we find that while R. often agrees with one or the other, we also find that he sometimes disagrees implicity or explicity with both of them.

---

[1] Because of the frequency of these names in this study, the following abbreviations will be used: R. = Rashi; M. = Menaḥem, or his dictionary known as *Maḥberet*; D. = Dunash, or his criticisms of M. ed. by H. Filipowski.

[2] For Arabic words in R.'s commentaries and on the question of the authenticity of some of them, see Epstein, Les Comparisons De L'Hebreu Avec L'Arabe Chez Les Exegetes Du Nord De La France, *REJ*, vol. 47, pp. 51ff; פרשנדתא פירוש רש"י על נ"ך, I. Maarsen, Introd., VIII, n. 12.

[3] For R.'s references to M. see Gross, *Menaḥem b. Saruk*, pp. 69, 70; Ewald u. Dukes, *Beiträge z. Gesch. d. ältesten Auslegung d. A. T.* vol. 2 p. 124 n. 1; for references to D. see Ewald u. Dukes, *ibid.*, p. 153 n. 2, and Zunz, *Zur Gesch. u. Lit.* p. 63. For anonymous references to M. and D. see N. Kronberg, *Rashi als Exeget*, Breslau, 1882, p. 21, n. 2.

M. holds roots with one weak letter to be biliteral, roots that are doubly weak he holds to be uniliteral. D. passed beyond M. only in recognizing that the so called פ"ו roots are triliteral. Did R. in his understanding and treatment of the forms derived from weak roots pass beyond M. and D.? Some believe that he did.[4] We have sought an answer to this question by a study of every passage in his biblical commentaries that discusses or refers to a form derived from a weak root. Inasmuch as the belief that R. excelled M. in his understanding of the weak roots is based principally on two or three passages in R.'s commentary on the Pentateuch in which M.'s view is opposed, it is essential that we understand something of M.'s lexicographical method.

M. does not often give after the manner of later lexicographers, the several meanings that a root may have. He conveys the various meanings by stringing together biblical passages, each containing a word derived from the root under which they are placed, which words to his mind have a common meaning. Under each root he has as many divisions as the different meanings which he supposed the root to have. These divisions are termed מחלקות. Only occasionally does M. conclude his citation of biblical passages in a division under a root with a definition given in his own words. He prefers to let the mere placing together of such passages convey to the reader the different meanings inherent in the root. Each division is supposed to convey a different meaning. A study of those passages in which R. disagrees with M. will reveal that well nigh all the disagreements concern the definition of words and not their roots. In other words, R. objects to the placing of one or more passages in a certain division of the root, which, to his mind, should have been placed in another division of the same root. This will be made clear in our detailed discussion of several comments by R. which have been misunderstood, or are likely to be misunderstood, and which led to the belief that R. recognized the triliterality of certain roots that M. holds to be biliteral.

---

[4] Kronberg, *ibid.*, p. 16; S. Poznanski, מבוא לפירוש על יחזקאל ותרי עשר לרבי אליעזר מבלגנצי, XVII; H. C. R. Eltoft, Rashi's Knowledge of the Triliteral Root in Hebrew, *Journal of the Manchester Egyptian and Oriental Society*, XIV, 1929, pp. 53 -60; a study that is limited to the consideration of a comparatively few passages in the Pentateuch. It does not justify the author's conclusion: "It may be that he (R.) was stumbling independently along the same path as Judah b. Hayyuj."

Inasmuch as M. considers as real root letters only those that always remain sensible to the ear or eye in the course of all the mutations that a word undergoes in the process of conjugation or declension, it necessarily follows that all of the weak, פ״ן and ע״ע roots with few exceptions are biliteral to him, or, if a root is doubly weak, it is uniliteral. By way of preparation for a proper understanding of R.'s disagreements with M. in passages to be subsequently cited and discussed, we here give M's treatments of two roots. Under the root תך (p. 184) M. has four divisions, or as we would say, definitions. In the first division three passages are cited one containing תּוֹךְ (Ex. 14.23), another תִּיכוֹן (Ex. 26.28) and the third תֻּכּוּ (Dt. 33.3), all of which, as he gives it, have the meaning of קרב. In the second division we find passages with תּוֹךְ (Ps. 72.14), and תְּכָכִים (Ps. 29.13) containing the idea of oppression. The third division has one passage containing the word תֻּכִּיִּים (I K. 10.22). The fourth division cites passages whose verbs in reality are פ״ן. Of the six passages cited in this division one contains the form הִתּוּךְ (Ezek. 22.22) and another the form נִתַּךְ (Ex. 9.33). R. in his comment on the last named word writes: ומנחם בן סרוק חברו בחלק כְּהִתּוּךְ כסף ורואה אני את דבריו. Here R. agrees with M. in bringing together תִּתַּךְ and הִתּוּךְ. It should be noted that M. collocated in the fourth division of the root תך passages containing what we term פ״ן verbs, and that R. offers no objection to their being placed under this root.

Under the root ער (p. 137) M. has eight divisions or definitions. Among the passages cited in the sixth division, one contains the word עָר (Cant. 5.2) and another עֲרִירִי (Gen. 15.2). From this collocation R. infers that M. defines עָר as "heir" and that the word ערירי, having a privative force, means "heirless."[5] R., however, disagrees with this definition. He believes that ערירי has the meaning of "destruction", and therefore is related to such words as עָרוּ (Ps. 137.7) and עָרוֹת (Hab. 3.13), which M., however, had put in the fifth division of the root ער. Here we see that R.'s difference with M. is not as to the root of עירירי, but only as to the definition thereof. It should be noted in this connection that in one division of the root ער, M. cites words of ל״ה, ע״ו and ע״ע roots. Similar instances of M.'s bringing together forms of different weak roots and of R.'s differing with him only with regard to definition can be greatly multiplied.

---

[5] M. himself does not define these words.

Uniliteral Roots

R., like M. and D., holds certain roots to be uniliteral. M. gives a very large but a professedly partial list of words alphabetically arranged, whose roots he deems to be uniliteral.[6] As M. does not regard the ה״א of the ל״ה nor the נו״ן of the פ״ן as root letters, it naturally follows that this list contains a large number of such words as are ל״ה and פ״ן at the same time. D. likewise regards such doubly weak roots as uniliteral.[7] R. commenting on the form נוּגוֹת (Lam. 1.4) writes: לשון יגון, ואין שורש בתיבה אלא גימ״ל לבדה. M. has both נוגות and יגון in his list of uniliterals.[8] D. on the other hand thought that the נו״ן of יגון is a root letter.[9] R. follows M., but all three failed to see a פ״ו root in יגון. R. sees a common uniliteral root in the following words: נוּגֵי (Zeph. 3.18), הָגוֹ (Pr. 25.4) and הוּגָה (2 Sam. 20.13).[10] With reference to the root of עִיֵּי (Nu. 21.11) R. writes: והעי״ן בו יסוד לבדו, the word itself he connects with יָעָיו (Ex. 27.3) and וְיָעָה (Is. 28.17). It should be noted that R. does not regard the ה״א of the ל״ה verb יעה as root letter.[10a] All of these forms are included in M.'s list of single letter roots. R. very seldom gives the root of a word; were it his custom to do so, his list of uniliteral roots would unquestionably have been greatly enlarged. If the evidence to be adduced in connection with our study of R.'s treatment of ל״ה and פ״ן

---

[6] M., p. 40, s. אור.

[7] See, for instance D., p. 55, s. יגון where he calls the uniliterals הפעלים האחדים.

[8] M., *ibid.*, s. נ׳.

[9] *Ibid.*

[10] See R. on Zeph. 3.18.

[10a] M., p. 41a, also holds the root of יעה to be the one letter ע.

verbs will prove that he did not hold the ה"א of the former, nor the נו"ן of the latter to be real root letters, it follows that practically all roots which are ל"ה and פ"ן at the same time are uniliterals to R., even as they are to M. and D.

Kronberg makes the unqualified statement that M. and D. regard the פ"ו, ל"ה and פ"ן as biliteral, whereas R. regards them as triliteral.[11] Poznanski writes, that R. often excells M. and D. in his correct recognition of the root.[12] Both Kronberg and Poznanski cite in support of their claim but few passages, without a discussion of them. These will be considered in their proper place.

פ"ו

Kronberg is entirely mistaken in believing that D. holds the פ"ו root to be biliteral. No clearer evidence to the contrary could be desired than D.'s criticism of M. for placing יָגֵעַ under the root גע.[13] D. concludes his criticism with the words: ולכך עליך להודות כי מיסוד היו"ד.[14] R. follows D. in his view of the פ"ו as being triliteral. Of the verbs ויצא, וירד, וישב, וילך, R. says: היו"ד יסוד בהן and he gives their respective roots as יצא, ירד, ישב, ילך, and later in the comment he writes יו"ד אות שלישית בו.[15] He recognizes clearly that the וי"ו that appears in the Niphal imperfect takes the place of the יו"ד as root letter. This is evident from his comment on the form הִוָּסְדָה (Ex. 9.18) which reads: כל תיבה שתחלת יסודה יו"ד כגון יסד, ילד, ידע, כשהיא מתפעלת[16] תבא הוי"ו במקום היו"ד כמו הִוּסדה, הִוּלדה, וִיִּוָּדע וִיִּוָּלד.[17] Nevertheless it cannot be said that R. had a full knowledge of the forms that the פ"ו takes when conjugated. Thus, for instance, he sees no difficulty in regarding וַיָּחֶל (Gen. 8.10) as the Kal, of which the Niphal is וייחל (Gen. 8.12). R., discussing וַתְּיַבֵּב (Jud. 5.28) writes: לשון דבור כמו ניב שפתים . . . ואני אומר לשון ראייה כמו בבת עינו וכן חברו מנחם.[18] Two definitions of תיבב are given even as they are found in the M., the second is introduced by ואני אומר. This is somewhat puzzling for this phrase generally introduces an explanation by R. in opposition to one previously cited in the name of some one else. Be that as it may, the first explanation connects the word in question with an ע"ו root and the second with the root from which the word בבת is derived. R. strangely failed to discern the real root. In connecting נוֹסְדוּ (Ps. 2.2) with סוד, R. confuses a פ"ו with an ע"ו root.[19] R. connects נוֹאָלְנוּ (Jer. 5.4) a פ"ו verb with the ע"ו form אויל.[20] In defining יְיָרֵשׁ (Dt. 28.42) by the word יעני R. seems to derive the form from the root רוש. R. finds in וְיִקְצוּ (Hab. 2.7) and וַיָּקֻצוּ (Ex. 1.12) a common meaning, thus identifying a פ"ו with an ע"ו form.[21] It was previously pointed out that R. did not regard the first letter of the פ"ו verb יָעָה as a root letter.[21a] פ"י verbs such as וַיִּיטַב R. classifies as biliteral.[22] In אַיְסִרֵם R. correctly sees the root יסר. R. thus follows D. whom he cites as against M. who places this form under the root סר.[23]

---

[11] *Ibid.*, p. 16.

[12] *Ibid.*

[13] See D., p. 30 and M., p. 57.

[14] M. regards the root of all פ"ו verbs as biliteral; see p. 2 giving a list of such verbs of which M. says: תחלת המלה יו"ד ונראה כמיוסד. See also p. 74, where he devotes a section to forms having a consonantal וי"ו which, in most cases, he says, is not a root letter; among these he gives a number of פ"ו verbs in the Niphal imperfect. In his lexical arrangement the יו"ד is omitted from the פ"ו root.

[15] R. on Ex. 1.20.

[16] For the terms מתפעלת and התפעל referring to the Niphal, see Gen. 8.12; Num. 23.15; Hab. 2.16; Ps. 38.3.

[17] Cp. D.'s way of putting the same thought: הוי"ו והנקודה הבאה תחת הוי"ו שניהם במקום היו"ד עומדים, p. 30; see also R. on Num. 21.14.

In brief it may be said that while R. knew the פ"ו to be triliteral, he nevertheless follows M. when taking the root of some forms to be biliteral or even uniliteral.[24] In his general treatment of פ"ו forms R. passed beyond M. but not beyond D.

---

[18] M. himself is in doubt as to the root of ותיבב. Under בב (p. 43) he puts בבת עינו and ותיבב, but, he adds, ויתכן להיות ותיבב מגזרת ניב שפתים, ויכל מהתנבות (1 Sam. 10.13). Accordingly, we find that he puts ותיבב also under the root נב (p. 121). When M. puts ותיבב under בב, he undoubtedly means that it is a uniliteral with the letter בי"ת repeated, for he cites this word in his list of uniliterals (p. 40). M.'s two views of the root of ותיבב are reflected in R.'s comment.

[19] M. likewise puts both together in division 2 of the root סד p. 125.

[20] So M., p. 74, col. 1.

[21] He would, therefore, translate ויקֻצו not by "and they shall awake," but by "they shall cause sickening dread." Breithaupt's R. MS. 1, reads יקיצו for יָקֻצוּ; cp. ונקיצנה, Is. 7.6.

[21a] See above p. 402.

[22] תיבה שיסודה שתי אותיות (Ex. 1.20); see also Ex. 30.32.

[23] See D., p. 34 and M., p. 128.

ל"ה

The so called ל"ה root is biliteral to M. Forms derived from such a root always appear in his lexicon under a root without the ה"א. D.'s view we gather from his criticism of M. that touch ל"ה forms. D. attacks M. for regarding the root of הגה as consisting of only the one letter גימ"ל.[25] The opening statement of his critcism reads: והבאת במחברת גימ"ל הגה ברוחו הקשה (Is. 27.8), והוא מן הפעלים השניים. Here, clearly, D. holds the ל"ה to be biliteral. Inasmuch as part of the material in D.'s criticism has an important bearing on a proper understanding of R.'s view of the ל"ה as revealed in one his comments we here reproduce it in part: והגה הוא אחד מן הפעלים אשר יפעלון מהם זכרים בפעלים העוברים בתוספת ה"א, והנקבות בתוספת תי"ו ה"א, באמרנו אבתה הנקבה, אבה הזכר . . . בכה זכר, בכתה הנקבה, גלה זכר, גלתה הנקבה . . . ומן הפעלים השניים אשר יפעלון מהם בפעלים העוברים הזכרים בלא ה"א, והנקבות בה"א, בא הזכר, באה הנקבה . . . דנה הנקבה, דן הזכר . . . כל אלה הכתובים פה והדומים להם ממעל עומדים בטעמם עבור כי פעלים עוברים הם.

In substance D. points that הגה belongs to that class of verbs of a biliteral root, whose third person, singular masculine, in the Kal Perfect has the letter ה"א added to the root, and whose corresponding form in the feminine ends with תי"ו ה"א, as for example אבה and אבתה. Another class of verbs of a biliteral root has a form like בא in the masculine and באה in the feminine perfect, with the accent always on the penultimate.

It should be noted that although D. well knows the characteristics of the ל"ה and ע"ו verbs, he nevertheless holds the root of both of them to be biliteral. And because of this knowledge, we can say that had D. composed a lexicon of his own, he would not have made the mistake that M. so frequently made, namely, that of collocating passages containing ל"ה and ע"ו verbs in one and the same division of a root. Thus D. attacks M. for bringing together in one division of the root מאירות (Is. 27.11) and אריתי (Cant. 5.1)[26] D.'s objection is not to the fact that ל״ה and ע״ו forms were put under the same root, but, rather, that these forms were brought together in the same division of the root אר. Similarly we find D. criticising M. for bringing together in one division of a root ל״ה and ע״ע forms[27] or פ״ן and ל״ה,[28] or פ״ן and ע״ע.[29] Only occasionally does D.'s criticism touch the question as to the triliterality of the root of a form under consideration.[30] Only in his knowledge of the triliterality of the פ״ו and in his correct understanding of some forms did D. excel M. D., however, had a better insight as to what collocation should be made in the different divisions of weak roots. It would seem that he also had a better understanding of the changes which verbs of the different classes of weak roots undergo in the course of being conjugated. It was probably the recognition of this fact by Ibn Ezra that prompted him to say of D. that he was the first to begin to awaken from the deep sleep of ignorance touching the nature of weak roots.[31] M., it should be said likewise, by and large, put weak verbs of the same class together in one division of a root, but D. excelled him in the correctness of such placing. R. had the benefit of whatever forward steps had been made by D. This we can see in R.'s view of the פ״ו as triliteral. D., as we have

---

[24] Like יגה, see above, p. 402, n. 7.

[25] See D., p. 60 and M., p. 40, s. ג', and p. 52, s. גג.

[26] See D., p. 45 and M., p. 32.

[27] See D., p. 35 where he writes: ובחלק אחד הבאת את מי עשקתי ואת מי רַצּוֹתִי (1 Sam. 12.13), רוֹצֶה . . . (Ps. 147.11). Here beyond question, the criticism is not directed against the confusion of different roots, but against an improper collocation of passages under the root רץ. See M., p. 165.

[28] See D., pp. 16, 24.

[29] See D., p. 54.

[30] See D., p. 32; see also p. 24; here D.'s criticism centers about the word נֹעֵר (Is. 33.15) which M. rightly classified as a triliteral while D. maintains that the root thereof is ער.

[31] דע כי כל הקדמונים היו אומרים כי שרש ידר דר לבדו, ושרש שב ככה (ר״ל גם כן שרש ישב שב לבדו) ושרש עשה עש לבדו . . . ושרש נגע גע לבדו ושרש נטה ט״ית לבדו . . . זאת היתה דעת ר׳ יהודה בן קריש ור׳ מנחם בן סרוג, רק אדונים הלוי (ר״ל דונש) הקיץ מעט משינת האלות (צ״ל האולת), כי הנזכרים תרדמות השם נפלה עליהם ויפקח אלהים את עיני ר׳ יהודה ב״ר דוד הנקרא חיוג להכיר אותיות הנוח ואיך הם נוספים ונעדרים ומתחלפים. (שפה ברורה, ed. Lippmann, p. 25b).

shown, like M., regards the ל״ה as biliteral. Did R. go beyond M. and D. in recognizing the ל״ה to be triliteral?

R.'s comment on Ex. 2.10 is seemingly the most decisive in favor of the claim that he did.[32] The passage reads: משיתיהו . . . לשון הסירותיו כמו לא ימוש, לא משו, כך חברו מנחם, ואני אומר שאינו ממחברת מש וימוש אלא מגזרת משה, ולשון הוצאה הוא, וכן ימשני . . . שאילו היה ממחברת מש לא יתכן לומר משיתיהו אלא המישותיהו כאשר יאמר מן קם הקימותי ומן שב השיבותי ומן בא הביאותי, או משתיהו כמו ומשתי את עון הארץ (Zech. 3.9), אבל משיתי אינו אלא מגזרת תיבה שפעל שלה מיוסד בה״א בסוף התיבה כגון משה, בנה, עשה, צוה, פנה, כשיבוא לומר בהם פעלתי תבא היו״ד במקום ה״א כמו בניתי, עשיתי, צויתי.

It has been assumed that R. in this comment takes issue with M. as to the root of משיתיהו. A careful study of R.'s phraseology and terminology will prove, we believe, that this assumption is not correct. M. has two divisions or definitions under the root מש.[33] It is in the first that he has the passages containing the ע״ו verbs ימוש (Josh. 1.8), ימיש (Mic. 2.4), משו (Num. 14.44), and also the ל״ה verbs ימשני (2 Sam. 22.17) and משיתיהו. M. does not give in his own words a definition of these verbs, the impression given by R.'s comment to the contrary notwithstanding. R., in his comment gives to the verbs derived from what we call an ע״ו root the meaning of "to cause to depart" and to those from a ל״ה root he gives the meaning of "to cause to go forth" or "to draw out." This in itself would have been sufficient to call forth R.'s criticism of the collocation of passages as made by M., for it should be remembered that each meaning calls for a separate division under the root. Does R. object also to the placing of ל״ה and ע״ו verbs under the same root? It is believed that he does, evidently because of the following statement in his comment: ואני אומר שאינו ממחברת מש וימוש, אלא מגזרת משה.

Had there not been ample evidence to the effect that R. regards the ל״ה to be biliteral, and that, therefore, to R. the root of both משיתי and משו is necessarily מש, the above statement might justifiably have been interpreted to mean that R. holds these words to be of two different roots. The terms מחברת and גזרה have been taken to mean "root". However, they do not necessarily have that connotation. When R., commenting on דללו (Is. 19.6), writes, במחברת אם דל הוא (Lev. 14.21), he means to say that the two words have a common meaning and belong together. In thus defining a word, R. is using M.'s very method of conveying the definition of a word, which is that of bringing one or more passages together in one of the divisions of the root, each passage containing a word, which, to M.'s mind, has one meaning of that root in common. When citing M., R. frequently closes the citation with כך חברו מנחם, that is, such is the collocation made by M. The term מחברת, then, is the equivalent of חלק or מחלקת, also used by R. when referring to a division of a root in which M. placed a word under discussion.[34] It is clear that R. objects to משיתיהו being placed in the same division with משו. We have pointed out that these two words have different meanings to R. and that this fact alone would have been sufficient to evoke his criticism of M.

---

[32] See Kronberg, *ibid.*, p. 18, note 1; Poznanski, *ibid.*, and a number of supercommentaries.

[33] M., p. 120.

The term גזרה, as used in the comment under discussion, does not mean "root." This term has a number of connotations other than "root."[35] M. often uses this term in the sense of "belonging to this division" or "having the meaning." When M. is in doubt as to the exact meaning of a word, and therefore also as to the division of the root in which it properly belongs, he cites the passage containing the words of whose exact meaning he is not in doubt and then the passages containing words of whose rightful place in the division he is in doubt, prefaced by the statement ויתכן להיות מגזרתם . . . Thus, under the root גל, which has fourteen divisions or definitions, he uses the term גזרה three times in the sense of "meaning."[36] It is clear that M. is not at all in doubt as to the root of the words under consideration but only as to their definition and hence also as to the division on to which they belong. M., holding all the weak roots to be biliteral, naturally placed under one weak root forms derived from what we deem to be different weak roots having two strong letters in common. Thus, for example, in the different divisions of what he deemed to be the root חל he placed forms derived from what to us are the roots חול, חלה, חלל, יחל. The forms derived from the different classes of weak roots having חל as two of their radicals, M. placed correctly in different divisions because their difference in meaning was apparent. We thus find ל"ה verbs in one division, the ע"ו in another, etc. In the case of משו and משיתי M. evidently perceived no difference in meaning and hence placed them together in one division. R., however, perceived a difference and therefore objected to their being so placed. He also noted that משו and משיתי are conjugated differently; that משיתי, belongs to a class (גזרה) of verbs (biliteral) whose characteristic in the third person singular masculine Kal is a ה"א at the end, or, as he puts it in his comment, מגזרת תיבה שפעל שלה מיוסד בה"א בסוף התיבה. Elswhere he speaks of the ל"ה as a תיבה שסופה ה"א.[37] This statement of R., as will be shown presently, is equivalent to D.'s phrase תוספת בה"א with reference to the so called ל"ה.[38] D. is fully aware of the totally different forms that the so called ל"ה and ע"ו roots yield, and yet he regards these two classes of weak verbs as biliterals.[39] Therefore, when R. points out that משו and משיתי belong to two different classes of verbs that are conjugated differently, it does not follow that he deems them to be of two different roots and that the root of the latter is triliteral.

---

[34] See R. on Ex. 9.33; Is. 33.1; Job 22.30; cp. D., p. 45. M. in defining the word שעטנז writes: עניננו יורה עליו, ממחברת צמר ופשתים. Here מחברת is used in the sense of something combined or put together. We can see how naturally this word lends itself also to a collocation of passages in one division.

[35] See אוצר חכמת הלשון, C. Levias, pp. 249–253. R. employs the term in a number of senses. Thus, for instance, in the comment כַּחשׁ מגזרת וַתְּכחשׁ (R. on Ps. 38.3) there is no question as to root, the term גזרה refers to the conjugation of the word under discussion. When R. writes: וַיִּמַּח מגזרת וַיִּפֶן (on Gen. 7.23), he uses the terms to designate "form." When he speaks of אִמְרוֹ (Job 20.29) as being מגזרת אמרי . . ., and אמרתו . . . מגזרת אמרות טהורות the term in question clearly refers to the gender of the noun.

---

[36] See p. 74, divisions, 2, 5, 7. The term גזרה as applied to the classification of a word is clearly seen, for instance, in M.'s use of it in the eleventh division of the root ען (M., p. 135, div. 11). In connection with עוֹנָתָהּ (Ex. 21.10) he says: אם עוֹנָה משכב, המלה מגזרת ענין, אבל תורה דברה בלשון כבוד, ומהפותרים אשר אומרים ענין שכיבה ודירה הוא, דנין אותו מגזרת מעונה. To M. the root of both ענין and מעונה is ען. The division into which עוֹנָתָהּ is to be put, according to M., depends upon what is the meaning of this word. If it has reference to משכב, it belongs to the גזרה or division to which ענין belongs, if the meaning of the word is שכיבה then it belongs in one division with מעונה, that is, in division 3 of the root ען.

[37] On Gen. 7.23.

[38] See above, p. 405.

But, it may be maintained that the analogy we find between D. and R. touching the ל"ה is not correct, because D., on the one hand, clearly calls the final ה"א an added letter, whereas R., on the other, specifically refers to that letter as being מיוסד בה"א. Does not that imply, it may be urged, that R. does hold the ה"א to be a root letter? We proceed, therefore, to give indirect and direct evidence from R.'s comments to the effect that the term יסוד or its equivalent עיקר, where applied to a letter of a word, does not necessarily refer to a real root letter, that it is applied by R. also to a letter that is an essential part of the form of a word but is not a real root letter.

We find that R. calls the מ"ם of such a form as מאמר,[40] the תי"ו of such a form as תרומה[41] and other letters[42] a יסוד נופל or עיקר נופל. We here give one of his comments not only because it well illustrates the observation just made, but also because upon a correct understanding of the term יסוד נופל hinges the answer to the question whether R. holds the פ"ן to be triliteral. Commenting on the word יִקְּהַת (Gen. 49.10) R. says: היו"ד עיקר הוא ביסוד כמו יפעתך (Ezek. 28.7). If nothing further had been added by R., we would have been justified in saying that R. holds the יו"ד to be a real root letter. But, he continues thus: ופעמים שנופלת ממנו, וכמה . . . אותיות משמשות בלשון זה, והם נקראים עיקר נופל, כגון נו"ן של נוגף ושל נושך, ואל"ף שבאחותי (Job 13.17) ושבאבחת חרב (Ezek. 21.20) ואסוך שמן (2 K. 4.2). Here R. characterizes the יו"ד of יקהת and יפעתך, the נו"ן of the פ"ן verbs cited by him, and the אל"ף of the words אחותי, אבחת and אסוך as being each עיקר נופל, that is, a letter that is a formative but not a root letter.[43]

---

[39] *Ibid.*

[40] See R. on Ps. 55.22; many similar comments occur.

[41] See R. on Ex. 18.7 and thus often.

[42] See R. on Is. 59.10; 2 K. 4.2; Ezek. 21.20.

[43] M. gives lists of words beginning with אל"ף, תי"ו, מ"ם, and נו"ן (פ"ן), which letters he does not consider as root letters. Practically every form that is cited by R. containing a letter which he calls a יסוד נופל, is cited by M. in one of his

Thus far we discussed the term יסוד נופל; it remains for us to show that sometimes R. uses in place of it merely the one word יסוד. Discussing the form מִמְשַׁק (Zeph. 2.9) R. writes: מ"ם הראשונה יסוד היא בתיבה without adding the word נופל.[44] Having shown that the term יסוד does not necessarily refer to a real root letter, it follows that R. does not necessarily mean to say that the ה"א is a root letter when he writes: משיתי אינו אלא מגזרת תיבה שפעל שלה מיוסד בה"א בסוף התיבה כגון משה, בנה . . . כשיבוא לומר בהם פעלתי תבא היו"ד במקום ה"א כמו בניתי . . . Kronberg maintains that R.'s statement that the יו"ד in the first person perfect takes the place of the ה"א, is proof that R. knew that the ל"ה is triliteral.[45] We hold, however, that this observation of R. does not compel the conclusion that Kronberg draws. D. makes similar observations as to the forms that the ל"ה takes in contradistinction to the forms that the ע"ו takes, and yet, as we have shown, D. calls the ל"ה verbs biliteral.[46] D. speaks of the ה"א of the so called ל"ה root as being an added letter, R. undoubtedly means the same thing when he speaks of such a root as being מיוסד בה"א. Had R. believed that the יו"ד that appears in the first person singular takes the place of the root letter ה"א, as Kronberg would have it, surely in his comment on נטמינו (Job 18.3), which reads אין יסוד בו זולתי מ', ט', he would have included the יו"ד as part of the root, or, at least, he would have made mention of the fact that it takes the place of the root letter ה"א. In this comment R. clearly gives only two letters for the root of a ל"ה form.[46a]

If any doubt still exists as to R.'s holding the ל"ה to be biliteral, it should be dispelled by his calling the final ה"א a יסוד נופל in his comment on הָדָה (Is. 11.8) which reads: וה"א אחרונה באה

---

lists. See M. p. 2, col. 1; p. 3, col. 1; p. 4, col. 2. With reference to such letters M. writes: הנראים כנשרשים ועומדים עמידת מיוסדים ויעלו לעת מקרה, that is, they appear to be root letters but disappear at times. This fact, for M., necessarily rules them out from being root letters. These letters are elswhere spoken of by M. as not being root letters. See, e. g., p. 55, col. 2, last line; p. 12, col. 1. The term יסוד נופל is equivalent to M.'s phrase יעלו לעת מקרה.

[44] See above, p. 410.

[45] *Ibid.*, p. 17.

[46] See above, p. 405.

[46a] It was already noted that R. does not regard the ה"א of the verb יעה as a root letter; see above p. 402.

בתוכה יסוד נופל כמו עשה, בנה, קנה. We have shown that the term יסוד נופל can refer only to a letter that is not considered by R. as root letter. This, his statement, therefore, should be conclusive that to R. the ל"ה is biliteral.

Indeed, R. does not leave us in doubt as to this, for, in his comment on Ex. 1.20 he plainly classifies the ל"ה as a biliteral. In commenting on וייטב, he formulates a rule that begins thus: וזה חלוק בתיבה שיסודה שתי אותיות . . . To illustrate his rule touching the vocalization of the preformative יו"ד of biliterals in the apocopated imperfect waw consecutive Kal and Hiphil, he cites a number of verbal forms all of which save one are ל"ה. Kronberg is forced to acknowledge that R.'s comment on וייטב, and his comment on משיתיהו contradict each other.[47] In connection with the former R. clearly speaks of biliterals among which the ל"ה is included; in connection with the latter, according to Kronberg's interpretation, R. makes the point that the ל"ה is triliteral. The contradiction noted by Kronberg, however, is only the result of his misapprehension of what R. intends to say on משיתיהו. Kronberg seeks to solve the contradiction created by his interpretation by so emending the R. text as to make it appear that the opening words touching biliterals do not apply to the ל"ה verbs. He would have us believe that R. appended the ל"ה forms to the rule touching biliterals only because the same rule applies to the ל"ה also. But in order that the ל"ה forms cited by R. should not immediately follow the statement about the biliterals, Kronberg would have us insert these words וכן תיבה שפעל שלה בה"א.[48] The suggested emendation is utterly without foundation and is entirely unnecessary in the light of the facts touching the ל"ה already presented.

R.'s comment on Ex. 21.13 has also been cited as evidencing a view of the ל"ה in advance of that held by M. and D.[49] It reads, in part as follows: צְדָה: . . . לשון ארב, וכן הוא אומר ואתה צודה את נפשי לקחתה (1 Sam. 24.11) ולא יתכן לומר צְדָה לשון הַצָּד צַיִד (Gen. 27.33) שצידת חיות אין נופל ה"א בפועל שלה, ושם דבר בה ציד, וזה שם דבר בו צדייה

---

[47] *Ibid.*, p. 20, n. 1.

[48] *Ibid.*

[49] Poznanski, *ibid.*

(Num. 35.20) ופועל שלו צוֹדֶה, וזה פועל שלו צָד, . . . ומנחם חברו בחלק צד ציד, ואין אני מודה לו, ואם יש לחברו באחת ממחלקות של צד נחברנו בחלק על צַד תנשאו (Is. 66.12) צִדָּה אורה (1 Sam. 20.20) . . . אף כאן „אשר לא צָדָה" לא צדד למצוא לו שום צד מיתה, ואף זה יש להרהר עליו, מכל מקום לשון אורב הוא. In this passage R. takes issue with M. for having put צָדָה, meaning "to lie in wait," with צָד, meaning "to hunt," in the same division of the root צד.[50] Precisely as in the comment on Ex. 2.10, which we have discussed, R.'s objection is not that M. put verbs of two different roots together under one root, but rather that he put two verbs of different classes from the same root, but having different meanings, in one and the same division of that root. R.'s objection is plainly introduced by the statement that M. put צָדָה in one division with צָד, this he characterizes as being incorrect on the ground that these verbs differ in their respective meanings. The comment contains within itself proof that R. holds the root of both these verbs to be צד, for, R. does not insist that צָדָה should have been placed under a root other than צד; on the contrary, by implication, he takes it for granted that צדה is to be placed under this root; with him it is only a question in which division of the root צד the form צָדָה is to be placed. Only three forms of the root צדה occur in the sense of "to lie in wait," namely the two verbal forms and the nominal form cited by R. in his comment. These M. classified with the ע"ו forms. R., on the other hand, would have them in a separate division, "if indeed a place is to found for the form צָדָה in one of the divisions that M. has under the root צד," R. continues, "it should be placed in that division which contains such passages as על צד תנשאו, צִדָּה אורה."[51] The word צָדָה would then have some such meaning as "turning to the side," but, says R., even this collocation is questionable. Certain it is, he continues, that צָדָה means "to lie in wait." Is it not clear that R. grants the possibility of the ל"ה form צָדָה and the ע"ע form צָד being placed in one and the same division? All are agreed that the ע"ע root is a biliteral to R. If the ל"ה were a triliteral to him R. would not have even suggested the possibility of both צָדָה and צַד being put under the same root.

---

[50] M., p. 148, div. 5.

[51] M., *ibid.*, div. 2.

Only one other passage that is likely to be interpreted as indicating that R. holds the ל"ה to be triliteral calls for consideration. His comment on יָסוּף (Est. 9.28) reads in part thus: אי אפשר לומר להיות מגזרת פן תספה (Gen. 19.15) . . . שאם כן היה לו לכתוב לא יספה. This comment, even as the other comments that we considered in detail, centers about so called ל"ה and ע"ו verbs. Here too, as in the other passages, it is not the question of the root that is involved but of the collocation of these verbs in the same division. All that R. in effect says here is: יָסוּף does not belong to the same class or division of verbs to which תספה belongs (under the root סף). The latter belongs to the גזרה or class of verbs having a final ה"א in the third person singular masculine Kal, the former belongs to a class that is without the ה"א, hence its form is יסוף and not יספה. The fact they have different meanings is added proof that they do not belong together.[52] R.'s comment, very likely, was inspired by M.'s doing the very thing that R. cautions against.[53] In view of the character of R.'s differences with M., it may be said that he, like D., had a better understanding than M. of the forms of the so called ל"ה and ע"ו verbs; nevertheless, he like M. and D., in a dictionary of his own would undoubtedly have placed both צָדָה and צַד under the root צד, and both יסוף and תספה under the root סף. However, R.'s classification in the different divisions of the root would have been more correct than that of M.

Because R. did not know that the so called ל"ה is really a triliteral, he, like M., was given to confusing ל"ה forms, at times, with forms derived from other weak roots as can be seen from the instances that we now cite.

Gen. 21.16: כמטחוי קשת. כשתי טיחות . . . בלשון משנה שהטיח . . . ואם
תאמר היה לו לכתוב כמטחי קשת משפט הוי"ו ליכנס לכאן כמו בחוגי
הסלע (Cant. 2.14) . . . מגזרת יָחוֹגּוּ וינועו כשכור (Ps. 107.27)

---

[52] See targumic rendering of Dt. 2.14.

[53] See M., p. 127, s. root סף, where M. brings together סָפוּ (Ps. 73.19) and תספה (Gen. 18.23).

וכן קצוי ארץ מגזרת קֵץ. In this comment it is clear that R. does not recognize a triliteral root in מטחוי, for he associates it with a form derived from an ע"ו root. In this comment he also connects the ל"ה forms חגוי and קצוי with forms derived from ע"ע roots. No one maintains that the ע"ו and the ע"ע are triliteral to R.; the fact that R. associates ל"ה forms with forms derived from these roots necessitates the inference that to him the ל"ה is also biliteral. Indeed, in his comment on Ob. 3, R. definitely observes that the root of מטחוי consists of only the two letters טי"ת and חי"ת.[54]

Ex. 14.3: נבוכים . . . כמו נבכי ים (Job 38.16), בעמק הבכא (Ps. 84.7), מבכי הנהרות (Job 28.11). In this comment we find a confusion of a ל"ה (בכי) form with forms derived from ע"ו, פ"ן, and ל"א roots.[55]

1 Sam. 20.30: נעות מרדות: לשון נע . . . כאשר תאמר זעוה מן זע, כך תאמר נעוה מן נע. Here we have a perfectly clear example of a ל"ה form being identified with an ע"ו form. R. did not see that the root of נעות is עוה. Because of the prefixed נו"ן of the Niphal he was misled to believe that the root is נע.[56]

2 Sam. 19.44: וַיִּקֶשׁ: לשון התקוששו (Zeph. 2.1). A confusion of a ל"ה with an ע"ע form.[57]

2 K. 10.32: לְקַצּוֹת: כמו קַצְתִּי בחיי (Gen. 27.46). A similar confusion of a ל"ה with an ע"ו form.[58]

Prov. 15.7: יְזָרוּ . . . כמו זֵר זהב (Ex. 25.11). A similar confusion.

Eccl. 1.13: ענין: יש לפותרו מעון ודירה ויש לפותרו עיון וכן לענות בו. A similar confusion.[59]

---

[54] M. has מטחוי under טח (p. 97) and he remarks: והוי"ו איננו יסוד במלה אע"פ שהוא נענוע. Likewise the consonantal וי"ו of similar forms is not regarded as a root letter; see p. 74, col. 1.

[55] All these forms are cited by M. in the first division of the root בך, p. 45.

[56] So M., s. root זע, p. 80.

[57] M. is more correct in putting only ע"ע forms in div. 1 and ל"ה forms in div. 2, of root קש, p. 159.

[58] M. makes the same collocation in div. 4 of the root קץ; p. 157.

[59] See above, note 36.

Surely such confusions of ל״ה forms with forms derived from other weak roots would not have been made had R. had a clear understanding of the triliterality of the ל״ה root.

R. on the whole seems to be better informed than M. as to the forms that nouns derived from a ל״ה root take. Commenting on סְאוֹן סֹאֵן (Is. 9.4) R. implies that the root of סְאוֹן is סאן and not סא[ה]. For, he points out that if the root of סאון were סא[ה], then, the participle thereof would have to be סואה and not סֹאֵן, the form that occurs in the text. This comment as to noun formation in all likelihood was suggested to R. by D.'s criticism of M. for taking the root of סאון to be סא.[60]

In commenting on מִתִּגְרַת ידך (Ps. 39.11) R. takes issue with M. for putting תגרה which, in meaning, is related to התגרה, in one division with וַיָּגָר which means "to fear."[61] A noun derived from ויגר R. points out, would be תגורה just as תשובה is the noun form derived from וַיֵּשֶׁב, but, R. continues, such noun formations as תקוה, תאוה, מצוה, are derived from קִוָּה, אוה, צוה.

It should be said that though R. had a better understanding of ל״ה noun formations, he, like M. and D., in a dictionary of his own would have placed תִּגְרָה under the root גר, with this difference, however, that he, unlike M., would have placed the form in the division containing ל״ה and not ע״ו forms.[62] M. connected the form מָנוֹן (Pr. 29.21) with the so called ל״ה and פ״ו form תונו (Lev. 19.33). D. criticising him for so doing, connected מנון with מִנָּה (Dan· 1.10). R., however, correctly perceived that it is connected in meaning with נין.

---

[60] See M., p. 43, col. 1 and D., p. 29. D. proves M. to be in the wrong in taking the root to be סא, by pointing out that if any letter in a nominal form is found in a verbal form of any conjugation it is necessarily a root letter. By this test the root of סְאוֹן must be סאן as the נו״ן is found in the participial form.

[61] See M., p. 59, div. 3.

[62] It should be said that M., despite his wrong collocation of תגרה and ויגר had some knowledge as to noun formations of weak roots. For, in a series of nouns with prefixed תי״ו he gives such forms as תקומה, תקוה and תחנה, and he then shows that a verbal form תקומה is קמתי, or of תנופה it is הניפותי; of תקוה it is קִוָּה and of תחנה it is חֲנוֹתִי; see p. 12, col. 2.

פ"ן

The one passage which, because of its having been misunderstood, gave the impression that R. recognized the triliterality of the פ"ן is his comment on Ex. 3.22.[63] Because of the importance of this passage for a correct understanding of R.'s view of the so called פ"ן root, and of the necessity of analyzing it in detail we cite it here with few unimportant omissions: וְנִצַּלְתֶּם: כתרגומו ותרוקנון, וכן וַיְנַצְּלוּ את מצרים (Ex. 12.36), ויתנצלו . . . (Ex. 33.6) והנו"ן בו יסוד, ומנחם חברו במחברת צד"י עם נִיצַּל . . . הִצִּיל (Gen. 31.9) . . . (Gen. 31.16) ולא יאמנו דבריו, כי אם לא היתה הנו"ן יסוד והיא נקודה בחירק, לא תהא משמשת בלשון ופעלתם אלא בלשון ונפעלתם, כמו נִסַּחתם . . . (Dt. 28.63), נִתַּתֶּם . . . (Lev. 26.25), נִגַּפתם . . . (Lev. 26.17), נִצַּלנו . . . (Jer. 7.10), לשון נפעלנו, וכל נו"ן שהיא באה בתיבה לפרקים ונופלת ממנה כנו"ן של נוגף, נושא, נותן, נושך, כשהיא מדברת לשון ופעלתם תנקד בחטף, כגון וּנְשאתם . . . (Gen. 45.19) וּנְתתם . . . (Num. 32.29) וּנְמלתם . . . (Gen. 17.11), לכך אני אומר שזאת הנקודה בחירק מן היסוד היא, ויסוד שם דבר נצול, והוא מן הלשונות הכבדים כמו דבור כפור לִמוד כשידבר בלשון וּפִעלתם ינקד בחירק כמו ודברתם . . . וכפרתם . . .

It is in the fifth of the eight divisions under the root צל that we find M.'s collocation of passages referred to by R.[64] R.'s objection to the collocation as made by M. has been interpreted to mean that R. knew the root of נצלתם to be נצל. If this interpretation of R.'s objection is correct, the objection would certainly also imply that R. did not know that the root of הציל is נצל. How then can it be maintained that R. knew the פ"ן to be triliteral. At the utmost, R.'s objection would show that R. perceived that the root of נצלתם is triliteral, but it would likewise show that R. did not recognize a triliteral root in all forms that are to us פ"ן, and certainly not in הציל. Surely it must be granted that M.'s collocation of נצלתם and הציל evidences a more correct appreciation than R.'s objection does, of the true relationship of these two forms. This fact alone should give one pause before concluding that R. recognized the triliterality of the פ"ן.

---

[63] Elijah Mizraḥi in his supercommentary on R. *ad. loc.*; הבנת המקרא *ad. loc.* Heidenheim recognizes that R.'s difference with M. is not as to the root, but he does not grasp fully the nature of the difference. He believes it touches the conjugation to which נצלתם belongs. Kronberg offers no proof for his statement that the פ"ן is triliteral to R. He gives only one incidental reference to the פ"ן in connection with a statement touching the ל"ה. Because R. on Ps. 18.35 makes the statement to the effect that the dagesh in the Niphal of such forms as נִגַּשׁ takes the place of the assimilated נו"ן יסוד נופל, Kronberg concludes that to R. the פ"ן is a real root letter. Kronberg, however, completely misunderstood both the term יסוד נופל and the point that R. intends to make, as will be shown later. See, *ibid.*, p. 18 note. His reference to Ps. 28.2 is a typographical error for 38.3.

[64] M., p. 149.

The evidence that we shall present will show, we believe, beyond question, that to R. the נו"ן of the so called פ"ן verbs is not a root letter and, therefore, that to him, even as to M., the root of נְצלתם is צל. The point of difference between the two, therefore, must be as to the proper division to which נצלתם and the other forms cited by R. belong. That which led to a misapprehension of R.'s comment is the phrase והנו"ן בו יסוד which was taken to mean that the נו"ן is a root letter. But, it should be noted, that later in the comment R. speaks of this very letter as being one שהיא באה בתיבה לפרקים ונופלת ממנה, which corresponds exactly to the term יסוד נופל, a term, that R. often uses to characterize the נו"ן of so called פ"ן verbs.[65] We have shown that this term is applied only to such letters as are not deemed by R. to be root letters. If the נו"ן is not a root letter it follows that the real root of נצלתם to R. is צל just as it is to M. In a dictionary of his own, R. would have placed both נצלתם and הציל under the root צל, with only this difference, that these two words would have been placed in different divisions and not in the same division of that root. Needless to say M.'s collocation is more correct than that proposed by R.

Another reason prompted R.'s objection to M.'s collocation, namely, that נצלתם and הציל have different meanings. We previously referred to the fact that each one of the different meanings that a root has, in M.'s lexicon called for a separate division under that root. If the words in question have different meanings, it follows that they do not belong together in the same division of the root צל. R., unlike M. holds that נצלתם has the meaning of "to despoil;" this he indicates by citing the targumic rendering. On the other hand, R. holds that the meaning of הציל and its derivatives, as he states elsewhere, is always that of "to remove" or "to set aside," which is practically the definition that M. gives to both נצלתם and הציל.[66]

---

[65] See above, p. 410.

The rest of the comment is concerned with showing that the form נצלתם is of the Piel conjugation, hence active and not passive, the corresponding form of which in the Kal is vocalized with a חטף.[67]

It will be noted that among the פ"ן verbs that R. cites in his comment to explain the form נצלתם is נְמַלְתֶּם (Gen. 17.11). Turning to R.'s comment on this form we read: וּנְמַלְתֶּם כמו וּמַלְתֶּם והנו"ן בו יתירה ליסוד נופל לפרקים כגון נו"ן של נושך ושל נושא. Here clearly R. speaks of the נו"ן as a letter added to the root. To him the form נמלתם is exactly equivalent to מלתם. The term יתירה is often applied by R. to a letter of a form that can be dispensed with, or which clearly is not part of the root.[68] If we had no evidence other than the comment just cited we could with justice say that to R. all the so called פ"ן verbs have one thing in common, and that is that the נו"ן is not a root letter.

Only if we understand that to R. the פ"ן is a biliteral can we interpret his comment on the form נִחֲתוּ (Ps. 38.3) without getting into difficulties. It reads in part: . . . אין הנו"ן שורש בתיבה, שאם היתה שורש היה לו לכתוב ננחתו בי, אבל נו"ן של נִחֲתוּ וכן של נִתְּנְחַת אינה שורש, ונופלת לפרקים כמו נון של נגף, נשך, נדר, נקם כשמתפעל יאמר ניגף, נישך, נידר, ניקם, כמו ננגף, ננשך, ננדר, ננקם, שהדגש בא בתיבה במקום נו"ן . . . כן יאמר נִחֲתוּ כמו ננחתו, וכן נִחֲתָה . . . (Ps. 18.35) כמו ננחתה, שדרך החי"ת להתנהג כמנהג דגשות ברוב מקומות כגון כִּחש . . . אף כאן יאמר נִחֲתוּ כמו נִגְּשׁוּ . . . מגזרת

---

[66] See R. on Gen. 31.16 and Hos. 2.11; this corresponds to M.'s definition ענין ויסר.

[67] חטף is R.'s term for shewa, cp. R. on Dt. 4.41; Amos 3.12. On Ex. 15.2 we find בשבא בחטף in which the word שבא is omitted in one MS., it is very likely a gloss; see Berliner's note in his ed. of R. *ad. loc.* On Ezek. 2.2 and Job 11.17 we find שוא (so spelled).

[68] For term יתירה see, for example, R. on Jer. 22.24. See also Ex. 15.5; Is. 30.27 and thus often.

נחת . . . נגש והנו"ן יסוד נופל לכנס דגש במקומה כשהיא מתפעלת, וכן קשת גבורים חַתִּים (1 Sam. 2.4) מגזרת נחת וחתת כאשר יאמר מן נסב סבב, מן נשם שמם, נבל . . . בלל . . . כן יאמר נחת וחתת בלשון פעל. This comment with explanatory expansions may be rendered as follows: The נו"ן (of the root of the form נִחֲתוּ) is not a root letter, for if it were, the form in the Niphal would have to be ננחתו, (because a real root letter does not disappear from any form that the root may yield.). However, the נו"ן of נחתו (i.e., of the root thereof) as well as of the form תִּנְחַת (in the same verse) is not a root letter, because it falls away at times, even as does the נו"ן (of the following seemingly triliteral roots) נקם, נדר, נשך, נגף of which roots the forms in the Niphal (perfect are without this נו"ן) viz., נִקַּם, נִדַּר, נִשַּׁךְ, נִגַּף. In these forms the dagesh takes the place of the assimilated נו"ן, (the נו"ן in the forms with a dagesh is the Niphal prefix). These forms stand for ננקם, ננדר, ננשך, ננגף . . . Thus likewise נִחֲתוּ stands for ננחתו and נִחֲתָה for ננחתה. The letter נו"ן in these forms is not followed by a dagesh (which ordinarily takes the place of an assimilated נו"ן) because, as usual it takes implied doubling, even as it does in such a form as כִּחֵשׁ . . .; the form נִחֲתוּ, then, is identical with the form נִגְּשׁוּ, and their primary forms are respectively נחת and נגש; the נו"ן however, falls away (because it is not a root letter) and a dagesh takes its place (or it is implied in the letter חי"ת). Thus (the root of נחתו is found also in the word) חַתִּים, which form may be derived from the class of verbs whose primary form is נחת or חתת. Similarly (we find verbs with a נו"ן as יסוד נופל for their first letter, having also a primary form without the נו"ן but with the last letter doubled), e.g., נסב from סבב, נשם from שמם, נבל from בלל, so also נחת from חתת.

When R. writes at the beginning of his comment that the נו"ן is not a root letter, he certainly refers to the נו"ן of what we deem to be the root, and not to the נו"ן of the Niphal form as Kronberg interpreted it,[69] for, how explain R.'s inclusion of the נו"ן in the form תנחת as not being a root letter. When R. says that if the נו"ן were a root letter, the form in the text would necessarily have been ננחתו, he is but following the one time principle that a real root letter never disappears from any form that the root may yield. This accounts for the fact in M.'s lexicon we find under the rubric נו"ן those middle gutteral פ"ן verbs that do not assimilate the נו"ן and also such פ"ן roots as נשם, נפש, of which no forms occur in the imperfect, imperative, infinitive construct Kal, nor in the Hiphil, nor in the Niphal perfect or participle, in which forms alone the נו"ן can be assimilated. The fact that the form נִחֲתוּ is found in the Niphal without what we deem to be the root letter נו"ן, is proof to R. that the נו"ן even of the Kal form תִּנְחַת is not a root letter, hence his inclusion of this form in the statement that the נו"ן is not a root letter. Kronberg, therefore, is mistaken in believing that R.'s statement, that the dagesh takes the place of the נו"ן, is proof that to R. the נו"ן is a real root letter. He overlooked R.'s specific statement that the נו"ן of תנחת is not a root letter. When R. says that the dagesh takes the place of the נו"ן, he of course has reference to the נו"ן as יסוד נופל, that is, a non-root letter.

---

[69] *Ibid.*, p. 18, n. 1, his reference is to the closely parallel passage on נחתה (Ps. 18.35).

When R. speaks of the forms נחתו and נגשו as being . . . מגזרת נחת וחתת, it is evident in the light of the facts thus far adduced, that he does not use the term גזרה in the sense of "root," but rather in the sense of that "class" of verbs having נו"ן as a first letter without its being a root letter.

Further evidence of R.'s view of the פ"ן as a biliteral root is found in the final statement of his comment, in which he connects נחת with חתים, justifying such connection by citing examples of so called פ"ן verbs being interchangeable with so called ע"ע verbs, e. g. נבל and בלל. The latter class of verbs, it is agreed by all, is biliteral to R. even as it is to M. and D.; the inference is therefore justified that the פ"ן is likewise biliteral to R. Incidentally, R. failed to recognize that נחת and חתת are in reality two different roots, and that forms like נבל and נסב are in reality Niphal forms of ע"ע roots. Had R. recognized the triliterality of the פ"ן he would not have made the final statement in his comment.

R.'s comment on הַנְחַת (Joel 4.11) shows a similar identification of so called פ"ן and ע"ע roots. It reads: איני יודע אם לשון הורדה או לשון חתת, והנו"ן בו נופל כמו הַנְעַל . . . (Dan. 2.25), שאין בו אות שורש אלא על

R. is in doubt as to whether the meaning of the word in question is "to bring down," which in reality is derived from a פ"ן root, or "to dismay," in reality from an ע"ע root. This doubt could exist in his mind only on the assumption that to him both נחת and חתת have the same root, which means, that to R. the נו"ן of the former and the final תי"ו of the latter are not root letters, which is equivalent to saying that the root of both is חת. It will be noted that in this comment he also calls the נו"ן a letter that falls away, and as such it is not a root letter even as the נו"ן of the form הנעל, the root of which he gives as על, is not a root letter.[70]

Added and direct proof, if further proof is needed, that the נו"ן of the so called פ"ן verbs is not a root letter to R., is found in his comment on Is. 9.17 where he connects the form וַיִּתְאַבְּכוּ with נְבֻכִים (Ex. 14.3), בְּכִי (Job 28.11) and בָּכָא (Ps. 84.7), taking the primary form of all these forms to be נבך the נו"ן of which, he points out, in the course of the comment, appears only at times; he writes: כל לשון נבך אין יסוד תיבה אלא בך, that is, the root of all these forms is בך. This being the case, we can well understand how R. came to connect in his comment words of different weak roots. His comment naturally implies that the respective roots of the פ"א, ע"ו, ל"ה, and ל"א forms cited in the comment are all biliteral to R. We have already shown that the ל"ה is biliteral to him; his view as to the other weak roots will appear in the proper place. Incidentally it is interesting to note that the comment, in reality, does not contain a single פ"ן form.[71]

Discussing the hapax legomenon אִבְחַת (Ezek. 21.20), of which various explanations were given by the early Jewish exegetes, R. derives this word from נבח, we can understand how this was possible for him when he writes: נו"ן בנביחה יסוד נופל הוא ותבא אל"ף במקומו. As in the case of the form ויתאבכו, R. regards the אל"ף as taking the place of the נו"ן, so here, too, he regards אבח as equivalent to נבח.[72] Both the אל"ף and the נו"ן are not root letters to R. hence the interchange of letters does not affect the meaning of the word.

---

[70] M. has no form of נחת either under the root נחת or חת. This is one of a number of omissions in his lexicon.

[71] See R. on Is. 9.17 and the similar comment on Ex. 14.3. Under root בך M. gives בכא, בכי, and נבוכה instead of נבוכים; see p. 45.

[72] See M.'s criticism of such interchange of letters, p. 12, s. אבח; R. evidently ignored this criticism.

R.'s comment on נֹבֶלֶת (Is. 1.30) is one of those passages that might give the impression that R. knew the true root of the פ״ן. It reads: אין נובל לשון ריקבון כמו בלה, שאין נו״ן נופלת באותו הלשון, אלא נובל דבר הנלאה, מגזרת נבול תבול כמו תנבול. Here, as in all of the comments thus far considered, the question is not as to the root but as to the classification in one of the divisions of the root בל and, therefore, also, as to the meaning of the word under consideration. R. holds that נבל and בלה do not belong together, in the first place because they have different meanings, and in the second, because they belong to two different classes of verbs though they have the same root. נבל belongs to the class of verbs which has נו״ן as a formative letter, and it belongs together with תבול which stands for תנבול. בלה, on the other hand, never has a נו״ן in any of its forms. In this comment, as in the others that we discussed, the term גזרה is not used in our sense of "root" but in the sense that M. often used it.[73] It is very likely that R.'s comment is one of the many in which, without naming M., he takes issue with him, for we find that M. collocates the two classes of verbs which R. holds do not belong together.[74] In a dictionary of his own R. would have placed the verbs in question under the same root, but unlike M. he would have had a separate division for the so called פ״ן forms under a root without the נו״ן. R., like M. and D., holds the פ״ן to be biliteral, but like D. he excels M. in his knowledge of the characteristics of the פ״ן.

R.'s treatment of פ״ן forms confirms our conclusion that the פ״ן is a biliteral to R. This can be seen from the following citations:

Gen. 3.15: R. connects the ע״ו form ישופך with the פ״ן form נשף.[75]

Gen. 49.17: He similarly connects שפיפון with נשף.[76]

---

[73] See above, p. 408.

[74] See M., p. 45, s. root, בל, div. 8.

[75] M. has a separate division for the פ״ן and the ע״ו under the root שף, see p. 178, div. 1 and 4. This is one of the instances where M. is more correct than R.

[76] M. connects it with forms derived from שוף, *ibid.*

Ex. 9.31: The comment reads: נֻכָּתָה: נשברה . . . וכן לא נֻכּוּ (Ex. 9.32), ולא יתכן לפרש לשון הכאה,[77] שאין נו"ן במקום ה"א לפרש נֻכתה כמו הֻכתה, נֻכו כמו הֻכו, אלא הנו"ן שורש בתיבה . . . Certain it is that R. regards הֻכּוּ as belonging to a class of verbs that never has a נו"ן in any form, that is, it is not a so called פ"ן to him. On the other hand the נו"ן of נֻכּוּ, he says is שורש בתיבה. If by שורש he means here an actual root letter, he holds the root thereof to be נך. If, however, he means that the נו"ן is a שורש נופל,[78] then the root thereof is the one letter כ"ף. In that case the real root of both נֻכּוּ and הֻכּוּ is the same to R., namely the one letter כ"ף, and his point, then, is that these two forms belong to different divisions of the same root, both because they belong to two different classes of verbs that produce different forms, and because they have different meanings; the one means "to be broken," the other "to be smitten." If this interpretation is correct, we have here a comment, which in every particular parallels R.'s comment on נצלתם (Ex. 3.22), which we analyzed above. If R. means that the actual root of נֻכּוּ is נך, he shows no advance beyond M., who likewise holds the root thereof to be נך.[79] M. takes הֻכּוּ to be of a totally different root, namely the uniliteral כ"ף,[80] with which R. is unquestionably in agreement. On the basis of R.'s comment on נצלתם we are inclined to believe that R. regards both נכו and הכו as having the same root, namely the letter כ"ף, but belonging to different divisions of that root, because of their different meanings.

Num. 24.17: R. brings together קַרְתִּי (2 K. 19.24) and נֻקַּרְתֶּם (Is. 51.1), a confusion of an ע"ו with a פ"ן form.[81]

---

[77] Mizraḥi on Ex. 9.31 reports having seen a text with the insertion after this word of ששרשה הכה, which in all likelihood is a scribal gloss due to a misunderstanding of R.

[78] Cp. הנו"ן יסוד, which we have shown to be equivalent to יסוד נופל in comment on Ex. 3.22, see above, p. 417; cp. also Nah. 3.17.

[79] M., p. 122.

[80] M., p. 163.

[81] M. makes a similar collocation under root קר, p. 158, div. 6.

Is. 1.4: The forms נָזֹרוּ and יִנָּזְרוּ are brought together, evidently the root of both the פ"ן and the ע"ו forms cited by R. is זר to him.[82]

Is. 38.15: (Gen. 31.40) אֲדַדֶּה . . . כמו ותדד שנתי. R. fails to realize that אדדה, as it is vocalized, can be derived only from the root דדה, certainly not from נדד as he takes it. But as both the פ"ן and the ע"ע are biliterals to R., the identification is possible, as then the root of both אדדה and תדד is דד or rather the single letter ד' inasmuch as the reduplicated letter of the so called ע"ע root was not considered as a root letter. M., indeed, places both of these forms under the root ד'.[83]

Is. 46.6: The forms הַזָּלִים and יִזְּלוּ are brought together, again a confusion of an ע"ו and פ"ן form.[84]

Ezek. 20.43: R. evidently takes the root of the ע"ו form נְקֹטֹתֶם to be [נ]קט, for he defines it by the neo-Hebrew word קטטה, the root of which to him is also קט[ט].[85]

ל"א—פ"א

To determine whether R. passed beyond M. in his view of the פ"א and the ל"א roots, it is necessary that we have a clear understanding of M.'s view and of his treatment of these two classes of roots in his lexical arrangement. Those פ"א and ל"א forms, of whose roots no form without the אל"ף occurs, M. always places under a triliteral root. On the other hand, he does not regard as root letter the אל"ף of those so called פ"א and ל"א roots that yield a form without the אל"ף. The אל"ף that appears in one form and is omitted in one or more forms of the same root is a functionless letter to M. This we learn from a specific statement made by him in the introduction to his lexicon.[86] Logically, therefore, M.

---

[82] So M., p. 81, s. זר, div. 1.

[83] M. places both forms s. root ד', p. 62; see also above, p. 415, s. נבוכים for a confusion of a פ"ן with a ל"א and ע"ו.

[84] So M., p. 79, s. r. זל, div. 5.

[85] So M., p. 154, s. r. קט, div. 1.

[86] M., p. 4. He gives a professedly partial list of words in which the אל"ף is not a root letter. We give some of the forms in his several lists as they will

should have placed under biliteral roots all those forms that are derived from roots that yield even a single defective form without the אל״ף. But a study of his lexical arrangement, so far as they concern so called פ״א and ל״א forms, reveals that M. is by no means consistent, for, we find that he places forms derived from פ״א or ל״א roots, that yield some defective forms, sometimes under a triliteral root, sometimes under a biliteral and sometimes the very same form under both a biliteral and triliteral root. That we might the better understand whether or not R.'s view materially differs from that of M., we here give some examples of M.'s arrangement of so called פ״א and ל״א forms that well illustrate his inconsistency; some of these will later be compared with R.'s view.

אב Under this root M. puts אביתם, though a defective form like תֹּבֵא (Prov. 1.10) occurs. Consistently he should have placed both words under the uniliteral ב׳ (as the ה״א of the root אבה is not a root letter to him).

ארב Under this root he puts לַאֲדִיב,[87] but he also cites this form under the root דב because he connects the form with מדיבת נפש (Lev. 26.16).[88]

אהל Under this root he cites יֶאֱהַל, despite the fact that the defective form יַהֵל is found. The defective form is cited neither under אהל nor הל, but it is given in a list of words beginning with an אל״ף that is not deemed a root letter.[89]

אזן Among the forms cited under this root is יַאֲזִין, but the defective form מֵזִין, in keeping with the principle enunciated above, he places under the root זן.[90] Consistently, however, he should have placed all the forms of the root אזן under זן.

---

be considered in connection with R.'s treatment of the same forms. וַיִּתְאַבְּכוּ (Is. 9.17) מן נְבֻכִים (Ex. 14.3); לַאֲדִיב (1 Sam. 2.33) מן וּמְדִיבוֹת (Lev. 26.16); אֹהֶל מן יַהֵל (Is. 13.20); האזינו מן מֵזִין (Prov. 17.4); תֶּאֱלַף (Prov. 22.25) מן מַלְּפֵנוּ (Job 35.11); אפיתי (Is. 44.19) מן וַתֹּפֵהוּ (1 Sam. 28.24); מָצָא מן מָצְתִי (Num. 11.11); נָשְׂאוּ מן וְנָשׁוּ (Ezek. 39.26); נביא מן מהתנבות (1 Sam. 10.13) ומן ניב שפתים (Is. 57.19).

[87] See form in note 86.

[88] M., p. 61, div. 2.

[89] See form in note 86.

[90] M., p. 80, div. 6.

אזר Under this root we find the form ותאזרני (Ps. 18.40), but the defective form וַתַּזְרֵנִי in the parallel passage (2 Sam. 22.40) M. does not regard as being connected in any way with ותאזרני. M. puts it under the root זר and connects it in meaning with זֵר זהב (Ex. 25.11), that is, with a so called ע״ו root.[91]

אכף Under this root he cites אָכַף (Prov. 16.26) and says: הוא מגזרת כפופים (Ps. 146.8) וְאִכַּף . . . (Mic. 6.6) וכבר קדמו קצות המלים הגרועים אל״ף.[92] M. puts כפופים and אִכַּף under the root כף.[93] He clearly does not regard the אל״ף of אכף as a root letter (for the ע״ע is a biliteral to him), as can be seen from his collocation of passages; yet he puts the word under the rubric א׳.

אלף After citing under this root forms like אֲאַלֶּפְךָ (Job 33.33) and יְאַלֵּף (Job 15.5) he continues: ויש מגזרתם מלין גרועי אלפי״ן, ואלה הם: מַלְּפֵנוּ (Job 35.11) וכמוהו תלפיות (Cant. 4.4). However, under the root לף we find מַלְּפֵנוּ and following the citation of the passage in which this form occurs, he writes: ענינו יורה עליו שהוא לשון למוד מגזרת ואאלפך . . . תאלף ומגזרת תלפיות.[94] M. recognized that all the forms cited have the same primary meaning, yet he classified them under two different roots.[95]

אמר Though the defective form תֹּמְרוּ (2 Sam. 19.14) occurs, he does not cite it under the root מר.

אסר Similarly, the defective form הַסּוּרִים (Eccl. 4.14) is not cited under סר.

אפה Because the defective form וַתֹּפֵהוּ[96] occurs, M. should have placed all forms of this root under the uniliteral root פ׳, but inconsistently he places them under the root אף.

---

[91] M., p. 82, div. 5.

[92] *I. e.* on p. 4.

[93] M., p. 108, div. 4.

[94] M., p. 114, div. 1; תלפיות is equivalent to תאלפיות, i. e. "a tower for guidance," so also Janaḥ, as cited in Dict. of Redaḳ, ed. Biesenthal and Lebrecht, p. 18. See also note 86 above.

[95] See note 86. [96] *Ibid.*

בוא Of this root the defective form בָּנוּ (1 Sam. 25.8) occurs, yet the forms of this root are not placed under the single root letter 'ב.

טמא Despite the occurrence of the defective form נִטְמֵתֶם (Lev. 11.43), M. has no root טם under which this form should consistently have been placed.

צמא The defective form צָמִתִי (Ju. 4.19) occurs, yet M. puts the forms derived from this root under צמא. On the other
מצא hand, the forms that are derived from מצא are cited under the root מץ because the defective form מָצָתִי (Num. 11.11) occurs.

We see, therefore, how inconsistent M. is in his arrangement of forms derived from פ"א and ל"א roots that sometimes yield a defective form. Yet it is clear that M. recognized the true relationship of the defective to the full forms, so much so, that he sometimes put the same forms under both a biliteral and triliteral root.[97]

D. criticizes M. for his inconsistency in regarding, on the one hand, the אל"ף of אפה as not being a root letter because such a form as תֹּפֵהוּ occurs, and, on the other hand, taking the אלף of אבה to be a root letter, though the defective form תֹּבֵא of this root occurs. D. then proceeds to show that both אפה and אבה are conjugated in the very same way, that, therefore, they belong to the same class of verbs.[98] D.'s criticism is evidently based on M.'s list of words whose אלף is not a root letter, in which list the form אפיתי is found, for, as a matter of fact, M. in his dictionary proper put both אפה and אבה under the rubric 'א, as if the אל"ף were a root letter. D.'s criticism would have been more to the point and would have thrown some clear light on his (Dunash's) view of the root of so called פ"א and ל"א forms if his criticism had been directed against M.'s putting such forms as האזינו and מֵזִין under two different roots. As it is, his criticism may mean that he would have put all forms derived from such פ"א or ל"א roots of which some defective form occurs, under a root without the אל"ף, or it may mean that D. holds all such roots to be triliteral. Unfortunately, his criticism either of M. or of Saadya do not throw light on the question.

---

[97] M.'s regarding וחזרני and ותאזרני as of two different roots and also of two different meanings is an exception. See above, note 90.

[98] See D., p. 25, s. אפה.

It has been maintained that R., unlike M. regards the פ"א and ל"א as triliteral.[99] But this unqualified statement cannot stand in the light of a number of comments by R. Thus we have shown that R., like M., takes the root of the פ"א form ויתאבכו to be [נ]בך.[100] It is difficult to believe that he would have done this had he considered the אל"ף as a real root letter. Similarly, as was pointed out, R. found no difficulty in regarding the אל"ף in the form אִבְחַת as taking the place of the נו"ן of נבח, because neither of these two letters was considered by him as a root letter.[101]

Commenting on the form מגורי (Ezek. 21.17) R. writes: לשון אוגר . . . (Prov. 10.5), אגרה . . . (Prov. 6.8), מַמְּגֻרות (Joel 1.17), מְגוּרָה ומנחם חברו לשון יראה כמו ויגר (Hag. 2.19). R.'s citation of M., very likely, may give one the impression that R. is taking issue with M. as to the root of מגורי and the other forms that he cites, that is, that R. holds the root of the forms in his comment to be אגר, whereas M. holds it to be גר. If this impression is the correct interpretation of R. comment, it must be conceded that M. in connecting the forms in question with forms derived from an ע"ו root is more correct than R. But, as a matter of fact, reference to M.'s dictionary shows that R. is in complete and literal agreement with M. as to the root as well as to the definition of the forms cited by him. For we find that, while M. placed all the forms in question under the root גר,[102] he also placed them under the root אגר,[103] where he says: וראוי לעלות האל"ף מראשית המלה כאשר כתוב במחברת האלפין כאלה: יְגֹרֵהוּ, מְגוּרָה, מַמְּגֻרֹת, כלם לשון אגירה הם. We see, therefore, that both M. and R. believe that the אל"ף dropped out from the forms in question. It is difficult to say what R. means in citing M. by way of contrasting M.'s definition with his own, for, M. defines the words under consideration as cited under the root גר by לשון קביצה, and the very same forms as cited under the root

---

[99] Kronberg, *ibid.*, p. 19.

[100] See above, p. 422.

[101] See above, *ibid.*

[102] M., p. 59, div. 4.

[103] M., p. 15, div. 1.

אגר he defines by לשון אגירה, with which, R.'s definition is in complete accord. The contradiction that lies in the citation by R. of M's definition and the totally different definition as given by M. himself, may possibly be accounted for by assuming that in R.'s edition of M.'s lexicon the noun and verb forms derived from גור meaning "to fear" and the forms cited in R.'s comment were in one and the same division, whereas in the printed text they are in separate adjacent divisions.[104] But, this suggested solution of the difficulty necessitates the assumption that R.'s edition did not contain M.'s definition, which, we pointed out, is, in complete harmony with R.'s definition.

Be that as it may, certain it is that R. like M. believed that the forms cited by him in his comment could be derived from a so called פ"א root. This does not bespeak a view of the אל"ף as a real root letter, at least so far as the root of the forms under consideration is concerned. M. clearly reflects this by his putting the forms both under גר and אגר. We find, indeed, that R. speaks of an אלף that is a יסוד בתיבה הנופל ממנו לפרקים.[105] It will be recalled that R. speaks in the very same way of the non-root letter נו"ן of the so called פ"ן.[106]

In one instance, R. definitely calls the אל"ף of a פ"א verb אל"ף יתירה; thus, in commenting on the form יַאֲהִיל (Job 25.5) he writes: . . . כמו . . . יָהֵלּוּ (Is. 13.10) ואל"ף זו באה כמו ולאדיב את נפשך (1 Sam. 2.33) אל"ף יתירה. The root אהל in the sense of "to shine" is found only once. Some scholars would therefore emend יאהיל to יָהֵל. In effect R. does the same thing when he connects the form with יָהֵלּוּ. His justification for so doing is that the אל"ף is not a root letter, nay, to him it is superfluous, which view is precisly equivalent to what M. writes of the אלפי"ן which to him are not root letters; his statement reads: לא הובאו לא לעיקר ולא לשרת כיתר האותיות.[107]

Thus far we have shown that not every פ"א is a triliteral to R. We now give evidence to the same effect with reference to the

---

[104] In the printed edition they are respectively in div. 3 and 4.

[105] R. on Ps. 119.5.

[106] See above, p. 419.

[107] M., p. 4. In this list the form לאדיב is also given. See above, n. 86. See also R. on Job 38.28.

ל"א. Commenting on נביאך (Ex. 7.1) R. writes: הוא מגזרת ניב שפתים (1 Sam. 10.13) מהתנבות . . . (Prov. 10.31) ינוב . . . (Is. 57.19). In connecting נביא with ניב, that is a ל"א with an ע"ו form, R. follows M. in holding the root of all the forms cited in the comment to be נב.[108] It need hardly be said that the reason that both R. and M. did not hold the אל"ף to be a root letter is because this letter is not found in the form התנבות.

We now proceed to note R.'s comments on the defective forms of פ"א and ל"א roots, other than those already considered. If any advance was made by R. beyond M., it will appear in the character of his comments on such forms.

יַהֵל (Is. 13.20): With regard to this form, R. correctly observes: כמו יאהל . . . ואל תתמה על יַהֵל הנבאר כאילו היתה בו אל"ף כי יש שהברת קול האות במקום האות וכן מַלְּפֵנוּ (Job 35.11) כמו מאלפנו וכן מֵזִין (Prov. 17.4) כמו מאזין.[109]

It would appear from this comment that R. holds the defective forms to be derived from the forms with the אל"ף, whereas M. holds the defective forms to be the original ones. M. believes that the אל"ף is an added letter without the force either of a root or servile letter.[110] We have shown, however, that though M. does not regard as a root letter the אל"ף of פ"א forms derived from a root that produced a form without the אל"ף, he nevertheless, at times placed such roots under the rubric 'א, as if that letter were really a root letter. On the other hand we find that R. also like M., at times, did not regard the אל"ף as root letter as can be seen from his comment on some of the following forms.[111]

לַאֲדִיב (1 Sam. 2.33): R. connects this word with מְדִיבת נפש,[112] in so doing he follows M.[113] R. did not hold this אל"ף to be a root letter, for elswhere he refers to this very אלף as being יתירה.[114]

---

[108] See M., p. 121, where he brings together ניב, ינוב and התנבות. M. does not have the root נבא in his dictionary.

[109] See R. on Zeph. 1.2 for similar comment.

[110] Therefore it is that in his list of words with אל"ף as a non-root letter he first gives a form without the אל"ף and then places it in connection with a form with this letter, thus: האזינו מן מזין; אֹהֶל מן יַהֵל, see M., pp. 4, 5.

[111] See above, p. 426 n.

[112] R. on Lev. 26.16.

[113] M., p. 61, s. דב, div. 1.

[114] See above, p. 430 on יאהיל.

וַתַּזְרֵנִי (2 Sam. 22.40): While R. has no comment on this form in connection with the text in which it occurs, we know that he took it to be equivalent to ותאזרני, for in his comment on Ex. 10.21 he cites it among the verbs from which the אל"ף has dropped out. He therefore, more correctly than M. understood both the form and its meaning.[115]

מֵזִין (Prov. 17.4): R. regards this form as equivalent to מאזין. M. puts these two words under separate roots.[116]

מַלְּפֵנוּ (Job 35.11): כמו מאלפנו.[117]

תַּלְפִּיּוֹת (Cant. 4.4): R. writes: הוא מגזרת מַלְּפֵנוּ והתי"ו בתלפיות כמו תי"ו שבתרמית ובתבנית. In this R. is in complete agreement with M. and D.[118]

הָסוּרִים (Eccl. 4.14): R. correctly notes: סמ"ך של הָסוּרִים נקוד רפי והרי הוא כמו האסורים.[119]

וְנָשׂוּ (Ezek. 39.26): To R. this form is equivalent to ונשאו. M. puts the forms derived from what to us is the root נשא under שא.[120] However, the defective form נשו M. has under the single root letter 'ש.[121] It is under the latter root that M. makes the collocation referred to by R. R.'s comment has reference only to the meaning of the word, which differs somewhat from that given to it by M. We cannot therefore say, whether or not R. agrees with M. in placing the form in question under the root 'ש.

יָמֵשׁ (Ex. 10.21): R. takes the root of this form to be אמש despite the fact that no verbal form of this root occurs in the Bible or Talmud. He holds the form to be equivalent to יאמיש. He cites the Midrash that connects the form with the root משש but evidently he does not accept

[115] See above, p. 427 s. אזר.

[116] See above, p. 426 s. אזן.

[117] R. on Is. 13.20, see above, p. 427 s. אלף.

[118] See above, *ibid.*

[119] In his first explanation of this word, R. connects it with the targumic word סרי, which is the rendering of the Hebrew ויבאש. This explanation, however, leaves the pointing of the article unexplained. M. does not cite the word in question either under סר or אסר.

[120] M., p. 82.

[121] M., p. 182, div. 2.

it as the literal interpretation of the word.[122] R. accounts for the omission of the אלף by stating in somewhat different form the principle given above,[123] it reads: יש לנו תיבות הרבה חסרות אל"ף, לפי שאין הברת האל"ף נכרת כל כך אין הכתוב מקפיד על חסרונה. The principle as given is correct but wrongly applied to the form.

אַחֲלַי (Ps. 119.5): Commenting on this form, R. writes: אל"ף יסוד בתיבה הנופל ממנו לפרקים כמו אל"ף שבאחותי (Job 13.17) ואל"ף של אסוך (2 K. 4.2) אַחֲלַי (2 K. 5.3). Clearly R. does not regard the אל"ף as a root letter. His phraseology with reference to it is the same as that with reference to the נו"ן of the פ"ן root, which, it was shown, is not a root letter to R. We can understand, therefore, why in his comment on אַחֲלַי he connects this form with וַיְחַל (Ex. 32.11) even though M. gives two specific reasons why this is not correct. R.'s comment presenting a view in direct opposition to that of M. is one of a number of instances that can be cited of R.'s independence of M. despite his generally close adherence to M.'s view. Yet, in this instance, it is clear that the spirit if not the correctness of M.'s view is more scientific than that of R.[124]

וָאָנוּשָׁה (Ps. 69.21): This form as it is vocalized is necessarily from the root נוש, in which case it is a hapax legomenon, hence the suggestion that has been made to read it as a passive participle וַאֲנוּשָׁה from a פ"א root. R. himself takes the root to be אנש, for he writes: וַאֲנוּשָׁה: ואאנש . . . כמו אֲנוּשָׁה . . . (Mic. 1.9) וכמו ויאנש (2 Sam. 12.15), ואם תאמר היאך האל'ף זו מְשַׁמֶּשֶׁת שרש ומשמשת שימוש המיסב הדבור אל המדבר, כך דרך תיבה שתחלתה אל'ף כגון וָאֹהַב (Mal. 1.2) אֹהֵב (Prov. 8.17) הרי הוא כמו אאהב. While correctly noting that one אל'ף may stand both for a root letter and the first person singular prefix,[125] R. fails to see that the form as it is vocalized cannot come from a פ"א root.

---

[122] M. does not cite this form either under מש or אמש. Redaḳ, in doubt as to its root, has the form under both מוש and משש; see his dictionary under these roots. The Targum takes it from מוש but R. opposes that.

[123] See above, p. 431, s. יהל.

[124] These two forms are generally taken as substantives with the meaning, "my wish is that," see *B. D. B. Dict.*, s. אח. M. notes that these words are hapax legomena whose root is unknown, and whose meaning as determined by the context is חפצי ורצוני ש . . ., the very same meaning as given above in a modern dictionary. M. being in doubt as to the root gives the forms as they are under the rubric 'א. M. also notes that some interpreters connect these forms with וַיְחַל (Ex. 32.11) and he proceeds to give two reasons why such a connection is incorrect; the first is the presence of the אל"ף in the forms, and the second is that it is always followed by פני which is lacking after the words in question. See M., p. 21. Redaḳ follows R. See his dict. s. אחל.

As a result of our comparison of R.'s treatment of the פ"א and the ל"א forms with that of M., it may be said that, on the whole R. follows M. rather closely in most of his comments. When he differs with M. R. does not necessarily advance beyond him. Like M., R. does not hold all the so called פ"א and ל"א roots to be triliteral. However, R. does pass beyond M. in regarding the defective forms that are found as secondary and not primary as M. regards them.

ע"ו

R. holds the ע"ו root to be biliteral.[126] This being the case, he naturally confuses certain ע"ו forms with forms derived from other weak roots.[127] Nevertheless some of his discussions evidence close familiarity with the forms which this particular class of verbs assumes in the course of being conjugated and of its noun formations.[128] It may be said that though R., at times, follows M. literally in putting together ע"ו forms with forms derived from other weak roots, he, nevertheless, shows in general, a better knowledge of the proper division to which so called ע"ו forms belong under a root which, according to the biliteral view, naturally has under it such forms as are derived from other weak roots having two strong letters in common.[129]

---

[125] D. makes the same observation as follows: ראוי (אֹהַב) להיות בשני אלפי'ן אאהב אחד ליסוד והשני למדבר, p. 30, s. יבש.

[126] R. on Gen. 15.17: תיבה שיסודה שתי אותיות.

[127] See above, p. 415, s. נבוכים; *ibid.*, s. לְקַצּוֹת; *ibid.*, s. ענין; *ibid.* s. ישופך, p. 423, s. נזרו; p. 415, s. יזרו.

[128] See his comment on משיתיהו, above, p. 407f, and on צדה, above, p. 412f; for a like familiarity see M., p. 82, col. 1 and above, p. 409; see D., above, p. 405.

R. notes a number of times the difference in the position of the accent in the ע"ו form that is the same in the third singular feminine perfect and participle feminine Kal. His observation runs thus: וזה חלוק בכל תיבה לשון נקבה שיסודה שתי אותיות כמו בא, קם שב, כשהטעם למעלה לשון עבר הוא כגון בָאה (Gen. 29.9), קָמה (Gen. 37.7) . . . וכשהטעם למטה הוא לשון הווה, דבר נעשה עכשיו והולך כמו באָה . . . (Gen. 29.6). This very observation is made by D.[130]

ע"ע

M. considered the so called ע"ע roots as biliteral. This is seen in his placing of ע"ע forms under biliteral roots. He also gives a list of ע"ע forms whose reduplicated letter he does not regard as part of the root.[131] D. holds the same view.[132] R. likewise held this class to be biliteral. This is evident from the following comment: גד גדוד יְגוּדֶנּוּ (Gen. 49.19): כלם לשון גדוד הם, וכך חברו מנחם, ואם תאמר אין גדוד בלא שני דלתי"ן יש לומר גדוד שם דבר צריך שני דלתי"ן, שכך דרך תיבה בת שתי אותיות לכפול בסופה ואין יסודה אלא שתי אותיות, וכן אמר כצפור לנוד (Prov. 26.2) מגזרת שבעתי נדודים.[133] It will be observed that in this comment, to illustrate his remark that a biliteral may produce a form with the last letter repeated, R. has ע"ע, ע"ו, and פ"ן forms. This repetition of the last letter, R. observes does not appear in the Kal (imperfect), to cite his own words: וכשהוא מדבר בלשון יפעל אינו כפול כמו יגוד, ינוד, ירום, ישוד, יסוב. But, continues R., in the Hithpael the repetition of the letter does appear; again citing his words: וכשהוא מתפעל או מפעיל אחרים הוא כפול כמו יתגודד, יתרומם, יתבולל, יתעודד. It will be observed that in the examples he gives, R. again brings together forms of different weak roots. M. frequently did this and also D. at times.[134] When, therefore, R., commenting on the form חָנַּנִי (Gen. 33.11), writes: אין חנן בלא שני נוני"ן, he does not mean to say that the second נו"ן is a root letter, but merely, as M. does, that the נו"ן is added to the root חן.[135]

---

[129] Such better insight is evidenced by his comments on Ex. 2.10 and 21.13, also his discussion of the root of תְּהוֹתְתוּ (Ps. 62.4) in which R. takes issue with M. for regarding the root thereof to be the uniliteral ת"ו, whereas R. specifically gives it as ה"א ות"ו.

[130] On Gen. 15.17. To similar effect, see R. on Gen. 42.21; *ibid.*, 46.26; Is. 26.11. D. likewise noted the position of the accent; see citation from him above, p. 405.

[131] See M., p. 42, col. 2, bottom, where he writes: חוגג מן חג, גזז מן גז, שררך (Ezek. 16.4) מן שרך (Ezek. 15.4) וגו'.

[132] See D. pp. 27, 28, s. וישתומם.

[133] Ehrlich, because of there not being a Hebrew root נוד, would read יְגֻדֶנּוּ, see his *Randglossen, ad. loc.*; the same form occurs in Hab. 3.16. In Ps. 94.21 we find the form יָגוֹדּוּ which consonantally is also from an ע"ו root but as vocalized from an ע"ע. M. and R., regarding as they do both the ע"ו and ע"ע as biliterals, find no difficulty, as some modern scholars do, in deriving its form from גדד, as the final letter of this root is not a root letter to M., D. and R.

When M. gives an ע"ע form, he first gives the full form and then a form from the same root without the reduplicated letter, thus: שָׁרְרֵךְ (Cant. 7.3) מן שָׁרֵּךְ (Ezek. 16.4): עממיך (Ju. 5.14) מן עמך.[136] R. reverses the process thus: שָׁרֵּךְ כמו שררך.[137] One cannot but be struck by the frequency with which R. explains ע"ע forms in this manner. We here give a few instances: נַשִּׁים . . . לשון שממה;[138] סבתי סבבתי;[139] נָבְקָה כמו בוקק;[140] יֵחָל . . . יחלל;[141] תְּסֻכֵּנִי תסוככני;[142] יְשָׁדֵּם ישדדם.[143] On the other hand, when an unusual full form occurs, R. gives the more usual shortened form thus for example: חֲצָצֶיךָ כמו חציך;[144] קִנְּנוּ לשון קן.[145]

CONCLUSION

In the light of our detailed examination of R.'s treatment and discussion of forms derived from the different weak, ע"ע and פ"ן roots, we believe ourselves justified in concluding that, save the פ"ו, all the weak roots, the ע"ע and the פ"ן are biliteral to R., that he passed beyond M. only in recognizing the פ״ן to be triliteral, and that in so doing he but followed in the footsteps of D. Furthermore, R., like M. and D., holds certain weak roots to be uniliteral. Furthermore R. like D. on the whole perceived more correctly than M. did to what division of a weak root certains forms of that root belonged, though, at times we find M. to be more correct. Finally, it is evident that R. for the most part was in close agreement with M. or D. in his explanations of forms and their roots.

---

[134] For other examples see above, pp. 414f., 423f.

[135] See M., p. 42.

[136] M., p. 43, col. 1.

[137] R. on Ezek. 16.4.

[138] R. on Num. 21.30; similarly with other forms from the same root in 1 K. 9.8; Ezek. 20.26; Hos. 2.14.

[139] R. on 1 Sam. 22.22.

[140] R. on Is. 19.3.

[141] R. on Is. 48.11.

[142] R. on Ps. 139.13.

[143] R. on Prov. 11.3.

[144] R. on Ps. 77.18.

[145] R. on Ezek. 31.6.

Unquestionably we must give to R. a high place in the history of the development of the *Peshaṭ* type of exegesis, in that he was certainly the first outstanding exegete of northern France to give impetus toward the simple or primary interpretation of the text. However, the chief service that R. rendered by his grammatical and lexicographical comments lies in his having transmitted the results achieved by others and not in making distinctive contributions of his own.

L'EXÉGÈSE BIBLIQUE DES JUIFS D'ALLEMAGNE AU MOYEN AGE

D'APRES LE MS. REUCHLIN 8 DE KARLSRUHE

Par M. GINSBURGER, Strasbourg, France

ON ne sait à peu près rien sur l'exégèse des Juifs d'Allemagne dans les premiers siècles du moyen âge, c'est à dire avant les grandes persécutions.

Zunz (*Zur Geschichte und Literatur*, p. 61 et suiv.) cite quelques noms d'exégètes allemands, comme Tobia ben Eliézer de Mayence, Kalonymos de Rome à Worms, R. Eléazar Chasan de Spire, Samuel ben Kalonymos de Spire, Juda le pieux de Ratisbonne, Eléazar de Worms, l'auteur du vieux *Nizzachon*, Méïr ben Barukh de Rothenburg, Jehudah ha-darschan, Ascher ben Jehiël, Jacob de Vienne. Mais la plupart de leurs ouvrages ne nous sont connus que par quelques rares citations, ou bien ils ont été rédigés dans d'autres pays comme le *Léqach tob* de Tobia ben Eliézer.

Ailleurs (*Die gottesdienstlichen Vorträge der Juden*, p. 313), le même Zunz prétend qu'au XIV^e siècle encore on ne s'occupait en Allemagne que de la Halachah ou de la Cabbale.

Geiger (*Wissenschaftliche Zeitschrift für jüdische Theologie* V (1842), p. 413 et suiv.) attribue à un Allemand du nom de Schimschon un vocabulaire qu'il possédait en manuscrit et qui se trouve actuellement à la Bibliothèque de la Lehranstalt für die Wissenschaft des Judentums. Mais je crois avoir prouvé (*REJ*, LXXXIII, 160 et suiv.) que ce Schimschon était d'origine française et que les gloses allemandes ainsi que de nombreuses additions, extraites de commentaires postérieurs, ont été ajoutées par un scribe allemand.

Personne, à ma connaissance, depuis Zunz et Geiger, n'a essayé de trouver une solution à cette question de savoir, si vraiment nous ne possédons plus rien ou presque rien des travaux d'exégèse biblique des Juifs d'Allemagne avant le XV^e siècle.

Les ouvrages et les articles de revues publiés sur l'histoire de l'exégèse biblique depuis trois quarts de siècle sont muets à ce propos.

A priori, on constate une contradiction dans les théories de Zunz, puisque, si l'on connaît des exégètes allemands et des fragments de leurs ouvrages, il n'est pas permis de dire que les Juifs allemands ne s'occupaient que de la Halachah et de la Cabbale.

En réalité, il est inutile de faire des hypothèses à ce sujet, puisque nous possédons encore un recueil contenant des explications exégètiques sur une grande partie de l'Ancien Testament. Ce recueil a été écrit en Allemagne, par un Juif allemand, dans la première moitié du XIVe siècle, de sorte que nous possédons, dans ce recueil, un moyen sûr pour nous faire une idée de ce qu'était l'exégèse biblique des Juifs d'Allemagne de cette époque.

Le recueil en question est le *Manuscrit Reuchlin* 8 de la Bibliothèque de Karlsruhe. Il a été décrit par mon ancien maître, le professeur S. Landauer, dans le *Catalogue des manuscrits de la Hof- und Landesbibliothek* à *Karlsruhe*, II (1892), p. 13–14.

M. Landauer se contente d'ajouter, à la description extérieure du manuscrit, quelques renseignements relatifs à son contenu. Il s'agit d'un Glossaire judéo-allemand de l'Ancien Testament suivant les versets du texte, non par ordre alphabétique des mots. La première colonne donne le mot du texte, la deuxième la traduction allemande et la troisième une explication hébraïque. C'est cette troisième colonne, spécialement, qui sera l'objet de notre étude.

M. Landauer ne donne aucune indication ni sur l'époque ni sur la région, où le manuscrit peut avoir été écrit. Or, on verra plus loin que je crois avoir trouvé une indication presque certaine que le manuscrit a été écrit en 1337, et mon ami M. Ernest-H. Lévy est d'avis que l'original, dont, s'est servi le scribe, avait été rédigé en pays alaman, probablement dans la région du lac de Constance.

I. *Notre auteur a emprunté un grand nombre de ses explications au commentaire de Raschi.* Une partie de ses explications se trouve dans nos éditions de Raschi.

ירט (Nombres 22.32): וכן פי' רש"י ל' חרד.
ותהינו (Deut. 1.41): כך פי' רש"י ל' הן.

ברגליהם (Deut. 11.6) : וכן פי' רש"י ל' רגלים ממש.
אפיך (Cant. 7.5) : וכן פתר רש"י זצ"ל ל' פניך.
כפים (Thr. 3.41) : כמ' וימלא כפה ממנו כך פי' רש"י.
נוכח (Juges 18.6): וכן פי' רש"י גלוי לפני המקום.
מחשים (Juges 18.9) : וכן פי' רש"י ל' מתעצלים.
מחשים (I Rois 22.3) : וכן פת' רש"י ל' מתעצלים.
ויעד (II Rois 17.13) : כך פי' רש"י ל' התראה.
השחין (II Rois 20.7) : כלומר שבשרו מתחמם כך פי' רש"י.
הגלבים (Hés. 5.1) : וכן פי' רש"י ל' רצענין.
אגפיו (Hés. 12.14) : וכן פי' רש"י ל' שריו.
ועשה אח (Hés. 18.10) : וכן פי' רש"י ל' ועשה אחת.
שאטים (Hés. 28.26) : וכן פי' רש"י וכן משוטיך.
כר (Isaïe 16.1) : וכן פי' רש"י ל' אכר.
בלהה (Isaïe 17.14) : כלומר שדים המבהילים כן פי' רש"י.

II. Les explications empruntées à Dunasch se trouvent toutes aussi chez Raschi, de sorte que notre auteur n'avait, sans doute, pas devant lui l'ouvrage de Dunasch.

ולבקר (Ps. 27.4) : וכן פתר דונש ל' בוקר.
לשדי (Ps. 32.4) : וכן פתר דונש כמ' לשד השמן לחלוחית.
בצלם (Ps. 39.7) : וכן פתר דונש ל' צלמות וחשך.
ככבש אלוף (Jér.11.19) : כן פתר דונש ל' כבש ואלוף.

III. Les explications empruntées à Menahem ben Saroug ne se retrouvent qu'en partie dans le commentaire de Raschi.

צמיד פתיל (Nombres 19.15) : וכן חי' מנ' עם נפתולי אלהים (V. ed. Filipowski, 147 n. 285).
תהותתו (Ps. 62.4) : ל' ויבא (Jér. 12.9) וכן חי' מנ' עם התיו לאכלה.
פעמך (Ps. 74.3) : וכן פתר מנ' עם ותפעם רוחו (Gen. 41.8).
שליש (Ps. 80.6) : ל' מידה (Is. 40.12) וכן חי' מנ' עם וכל בשליש.
מנלם (Job. 15.29) : וכן חי' מנ' עם כנלותך (R. ומנחם מסייעני).
אבי (Job. 34.36) : ל' אביתי (Deut. 1.26) מנ' חי' עם ולא אביתם לעלות.
בשלם (1 Rois 19.21) : צלי גבי גחלים כן פתר מנ'.
כנעתך (Jér. 10.17) : וכן חי' מנ' עם ויכנע (Ps. 107.12).
ונקוטו (Hés. 6.9) : וכן חי' מנ' עם ואתקוטטה (Ps. 119.158).
הגזרה (Hés. 41.12) : וכן פת' מנ' כמ' לשכה עזרה ובניין.
מאורת (Isaïe 11.8) : וכן חי' מנ' עם אור כשדים (Néh. 9.7).

IV. Une explication citée sous le nom de R. Mosché ha-Darschan se trouve aussi dans Raschi mais avec des variantes.

תשנה (Prov. 5.19): ראיתי בדברי ר' משה הדרשן תסגה תמיד תעסוק תמיד והוא לא עסק והביא ראייה לבקש שהגוייה [sic!] לבקש עסק ולא ידעתי אפוה נשתנות. (Cette note paraît provenir d'une main postérieure). Dans Raschi nous lisons: ראיתי בדברי ר' משה הדרשן תשגה תעסוק תמיד והוא ל' ערבי והביא ראיה כמו לבקש שגייה לבקש עסק ולא ידעתי איפה נשנית. Il ne me paraît pas impossible que la leçon והוא לא עסק, et lui (Salomon) ne s'occupa pas, de notre manuscrit soit la vraie, tandis que les mots והוא ל' ערבי de Raschi pourraient bien être une fausse interprétation de l'abréviation והוא לא ע', de sorte qu'il ne resterait qu'une seule difficulté, celle de trouver la référence pour לבקש שגייה que je ne vois dans aucun dictionnaire.

V. Le même phénomène se présente aussi pour d'autres explications empruntées à des auteurs nommés dans notre manuscrit. Nous les retrouvons dans le commentaire de Raschi ou d'autres mais avec des variantes et souvent sans nom d'auteur.

מקבילות (Exode 26.5): וכן חי' מנח' עם לקביל נברשתא ל' נגד (Dan. 5.5) Raschi: תרגומו של נגד לקביל.

השרד (Exode 31.10): וכן פתר מנ' ל' עבודה ואין לו דומין Raschi: י"מ לשון עבודה ושירות.

חרות (Exode 32.16): וכן פתר מנ' ל' חרות, où il faut, sans doute, lire חרוש, cf. Ibn Ezra: י"א כי חרות כמו חרוש.

שערום (Deut. 32.17): וכן חי' מנ' עם לשעירים ל' שדים Raschi: ויש לפרש עוד ל' ושעירים ירקדו.

לתלפיות (Cant. 4.4): וכן חי' מנ' עם מלפינו מבהמות (Job. 35.11); Menahem dit, en effet, s. v. לף à propos de Job 35.11: ענינו יורה עליו שהוא לשון למוד מגזרת אאלפך חכמה (Job 33.33) Raschi donne à peu près la même explication mais sans nommer Menahem.

בסנסיניו (Cant. 7.9): ל' ענפיו כך פת' ר' מנחם; Menahem: ענינו ענפים וכפות ויתכן להיות מגזרת סנה; Raschi ne nomme pas Menahem.

שגיון (Ps. 7.1): מנ' פת' שם כלי שיר; Men. s. v. שג, 1: ענין רנן הוא; Raschi: מנחם אמר שגם זה אחד משמות הזמר על שם הכלי.

כסלי (Ps. 38.8): מנ' חי' עם ואת הכסלים ל' מחשבותיי Cette interprétation ne se trouve pas dans l'éd. Filipowski s. v. כסל. Raschi la mentionne mais sans nommer Menahem.

מכלל (Ps. 50.2): ל' קישוט (Hés. 27.24) וכן חי' מנ' רוכליך במכלולים; Raschi: שם דבר פרמנ"ט בל' (parement).

יחבל (Prov. 13.13): ל' השחתה (Is. 10.27) וכן חי' מנ' עם וחובל חבל; Raschi: הבוזה אחד מדברי תורה סוף מתמשכן עליו.

חלמות (Job 6.6): כמ' יחלמון בניהם (Job 39.7) ל' חוזק כן פת' מנ'; Raschi donne la même explication sans nommer Menahem.

ויצרי (Job 17.17): כלומר אבריי שנוצרו בי כן פת' מנ'; Raschi: איברים שאני נוצר בהם.

ונכר (Job 31.3): וכן חי' מנחם ל' ביום נכרו (Ob. 11.12) ל' מסגר; Raschi ne nomme pas Menahem.

חף (Job 33.9): וכן פתר מנ' לפי עניינו ל' טהור; de même Raschi, mais sans indication du nom de M.

בבר (Job 39.4): חי' מנ' עם חיות ברא (Dan. 4.29) ל' שדה; Raschi: בזרעים ובדשאים.

יעלעו (Job 39.30): וכן פת' מנ' עניין בליעה; cette explication ne se trouve pas dans l'éd. Filipowski, mais cf. Raschi.

התפלשי (Jér. 6.26): וכן פת' מנ' ל' כפישה ל' התגלגלי; Raschi: התגלגלי.

מבליגיתי (Jér. 8.18): כמ' ואבליגה מעט (Ps. 39.14) וכן פת' מנ' ל' מאמץ; Raschi: אבליגה ואתאפק עלי יגוני.

שפי (Nombres 23.3): וכן חי' מנ' עם ישופך ראש ל' נשבר ולוקה; Ibn Ezra: ואחרים אמרו כמו נכאה לב.

מפלשי (Job 37.16): וכן חי' מנ' עם ושקל בפלס הרים (Is. 40.12); Raschi: כאלו הם שקולים בפלס.

ומפזז (II Sam. 6.16): כן פת' מנ' עניין רקידה; Ibn Ezra: מפזז גם כן כמו מרקד.

Une autre partie des explications empruntées à des auteurs nommés ne se trouve pas dans d'autres commentaires, autant, du moins, que nous avons pu le constater.

חסיו (Deut. 32.37): כמ' מחסה מזרם וכן חי' מנ' עם לחסות תחת כנפיו (Ru. 2.12).

חנטה (Cant. 2.13): וכן חי' מנ' עם לחנוט את אביו (Gen. 50.2); La glose allemande est: *schmeckt wohl*, de sorte qu'il faut admettre que notre auteur attribue à la racine de חנט le sens de *faire sentir bon*, ce qui ne ressort pas clairement du texte de Menahem.

קלקל (Eccl. 10.10): מנ' חיבר עם נחשת קלל (Hés. 1.7); Men. s.v. קל, 4.

נבוכה (Esther 3.15): וכן פתר מנ' ל' בהלה; ib. s.v. בך, 1.

הות (Ps. 5.10): וכן חי' מנ' נהייתי ונחלתי (Dan. 8.27); Ib. s.v. הי.

שמץ (Job 4.12): וכן חי' מנ' עם לשמצה בקמיהם (Ex. 32.25).

ישור (Job 33.27): וכן פתר מנ' ל' יושר.

עקבי (Juges 5.22): וכן חי' מנ' ל' בעקבי הצאן (Cant. 1.8).

וישמע (I Sam. 15.4): וכן פתר מנ' ל' קיבוץ.

גרם (II Rois 9.13): בעל קומה (Gen. 49.14) מנ' חי' עם חמור גרם.

נצחת (Jér. 8.5): ל' תוקף (Thr. 3.18) וכן חי' מנ' עם אבד נצחי.

פרודות (Hés. 1.11): וכן חי' מנ' ל' פרושות; pas dans l'éd. Filipowski.

אשכרך (Hés. 27.15): וכן פת' מנ' ל' מנחה ותשורה.

יתפלשו (Hés. 27.30): וכן פת' מנ' עניין כפישה.

פתהן (Isaïe 3.17): ל' שוטה (Ps. 9.4) וכן חי' מנ' עם מי פתי יסור.

תשגשני (Isaïe 17.11): וכן חי' מנ' עם ואחריתך ישגא מאד (Job 8.7).

לרווחתי (Thr. 3.56): כלומר לרוחי דיבורי כך פי' הפרחון.

והריחו (Isaïe 11.3): ל' רוח נבואה כך פי' ר' סעדיה.

Tous ces faits nous permettent d'admettre, avec une grande probabilité, que notre auteur a connu directement les ouvrages de Raschi, de Menahem ben Saroug, de Salomon ibn Parchon et de R. Saadjah.

Un autre passage prouve encore qu'il a connu aussi le commentaire de Raschbam sur les Lamentations de Jérémie, mais je n'ai trouvé nul part l'interprétation en question; il s'agit de:

טחון (Thr. 5.13): ל' טיט כך פ"י רש"י ור' שמואל.

VI. Il va sans dire que notre auteur connaissait aussi le Midrasch. Les explications utilisés par lui se trouvent, dans certains cas, aussi dans d'autres commentaires.

מרזח (Jér. 16.5): ל' אבל כך פי' רש"י; mais Raschi se réfère au Midrasch en disant רבותינו פירשו.

טיפוחים (Thr. 2.20): ורבותינו דרשוהו בדאג בן יוסף שהיתה אמו מודדתו בטפחים בכל יום לתת זהב לבית המקדש כפי שהיה גדל (Midr. Echah rabba et Raschi ad locum) Cette note paraît être d'une main postérieure.

אילת השחר (Ps. 22.1): רבותינו דרשוהו באסתר. (V. Midr. Tehillim ed. Buber et Raschi ad locum).

לאיתן האזרחי (Ps. 89.1): זה אברהם אבינו כך דרשו רבותינו (V. Raschi).

עלוקה (Prov. 30.15): כך דרשו רבותינו זה גיהנם ואין לו דומין (V. Midr. Mischlé et Raschi).

פתיגיל (Isaïe 3.24): כך דרשו רבותינו כלי של גיל (Raschi: כלי שהוא מביאו לידי גילה).

VII. Souvent aussi notre auteur emprunte ses explications au Targum.

גבר (Job 3.2): כמ' איש תרגומ' גברא.

ולכפן (Job 5.22): כמ' רעב תרגומ' כפנא.

ושהדי (Job 16.19): כמ' עדות תרגומ' סהדותא.

שפקו (Job 20.22): כמ' ומצא להם תרגומ' הספקון להון (Nombres 11.22: היספקון).

יגל (Job 20.28): כמ' קש תרגומ' גיל (V. Targ. Job 13.25).

ועורקי (Job 30.17): ל' וינס תרג' וערק (Raschi; ל'א' עורקי רודפי).

פחזיו (Job 40.17): כמ' מרוח אשך תרגומ' מרין פחדין (Onk. Lév. 21.20 מריס פחדין).

עוללות (Juges 8.2): וכן תרגומ' חלשין (Ed. חלשיא).

טבור הארץ (Juges 9.37): כתרגו' תוקפא דארעא (R.).

נוכח (Juges 18.6): כתרגו' אתקין.

גיא הצבועים (I Sam. 13.18): כתרגו' מישור אפעיא (R.).

מעדנות (I Sam. 15.32): וכן תירג' יהו' מפנקא.

בניות (I Sam. 19.18): כתרגו' בבית אולפנא.

פרעוש (I Sam. 24.15): כן ת"י הדיוט.

בית יער הלבנון (I Rois 7.2): ת"י בית מקירת מלכיא (R.).

ויעד (II Rois 17.13): כתרגו' ואסהיד.

היונה (Jér. 46.16): כתרגו' דהיא כחמר מרוייא ל' יין (R.).

ונקוטו (Hés. 6.9): כתרגו' וידנקון (R.).

שאטך (Hés. 25.6): כמ' ויבז תרגומ' ושט (R.).

בלהות (Hés. 26.21): וכן תרגומ' בל היית (Targ. et R. כדלא הוית).

וארוזים (Hés. 27.24): הדסים וכן תרגומו (R.).

פתהן (Isaïe 3.17): ל' רוחב תרגומ' פתייה (R.).

ושאבתם מים בששון (Isaïe 12.3): כתרגומו (V. aussi R.).

VIII. L'exégèse personnelle de notre auteur n'est pas bien compliquée, c'est, en général, une exégèse de concordance, une explication des mots par des passages, où ces mêmes mots se trouvent employés dans un autre contexte. Souvent il arrive aussi que des mots différents sont mis en rapport les uns avec les autres dans les cas, où l'auteur prétend qu'il y a permutation de l'une ou de l'autre lettre de la racine des mots en question.

יחפוץ (Job 40.17): כמ' ולא יחפז זי"ן וצד"י מתחלפות (R.).

העופל (II Rois 5.24): ל' אופל עי"ן מתחלפת באל"ף (V. Targum).

ששזפני (Cant. 1.6): כמ' שרופות קדים ז' ור' מתחלפות.

יזורבו (Job 6.17): ז' מתחלפת בצ' ל' יצורבו (R.).

לכידור (Job 15.24): כמ' כידודי אש רי"ש מתחלפת בדל"י (R.).

ימריצך (Job 16.3): ימריצך כמ' ימליצך רי"ש ולמ"ד מתחלפות.

כידו (Job 21.20): כמ' ונכר לפועלי און ריש ודלת מתחלפות.

ונכר (Job 31.3): כמ' יראו עיד כידו ריש ודלת מתחלפות.

פרעהו (Job 33.24): כמ' פראהו עי"ן ואל"ף מתחלפות (R.).

Dans d'autres cas, il voit une interversion de lettres:

יערכוני (Job 6.4): כמ' יעכרוני מן תיבות ההפוכות.

ירזמון (Job 15.12): מן תיבות ההפוכות ל' רמז (R.).

Ou bien il attribue à un mot un sens et le sens contraire:

ואחלצה (Ps. 7.5): כמ' ויקח חליצתם משמש דבר וחלופו (R.).

Ou il sépare un mot en deux parties:

סחרחר (Ps. 38.11): משמש כשתי תיבות (V. R.).

מנלם (Job 15.29): שתי תיבות הזמנה שלהם ל' זימן (R.: הכנתם).

הפרשדונה (Juges 3.22): כמ' שתי תיבות ל' הפרש דונה (R.).

Ou il en retranche une lettre:

אגלי (Job 38.28): כמ' גלי ים ואלף יתירה (R.).

Ou il en ajoute une:

מרעהו (II Sam. 3.8): כמ' רעהו והמ"ם מן היסוד (V. Targum).

ותעלומה (Job 28.11): שם דבר של העלמה.
שם מזל י"א תעלומה שם חלון (R.).

IX. Si la concordance ne suffit pas à fournir une explication pour des mots rares ou difficiles, l'auteur a recours aux dialectes ou aux langues étrangères; au langage de la Mischnah:

חנטה (Cant. 2.13): לשון משנה אחר חנטה (b. R. hasch. 15 ab).

גולמי (Ps. 139.16): לשון משנה גולמי של עץ ל' דפוס (Kelim 12.8).

להתגרד (Job 2.8): להתגרד ל' משנה גורדו והעמידו על גלדו (R.).

ואסלדה (Job 6.10): ל' משנה שהיד סולדת בו (R.).

גלדי (Job 16.15): ל' משנה העמידו על גלדו ל' מכתו (V. R.).

יחרף (Job 27.6): ל' ימהר לשון משנה הא בחרפי הא [באפלי] (b. Taan. 3b).

הצעירתה (Juges 3.26): אילנות עבים ודקים קרוין שער בל' משנה 'השעירת' (R.).

הילולים (Juges 9.27): כתרגו' חינגין לשון משנה כי הלולא (R.).

נסחף (Jérémie 46.15): נסחף לשון משנה סחופי כסא (b. Sabb. 66b).

פרודות (Hés. 1.11): ובלשון משנה פרודה ל' חיבור (Source ?).

מפלשי (Job 37.16): לשון משנה מבוי מפולש (V. Ibn Ezra).

תמרי (Job 39.18): כמו לשון משנה ואמרו פועלים ל' פרא (Source ?).

שחץ (Job 41.26): לשון משנה אנשי שחץ ל' גאוה (b. Sabb. 62b).

à l'araméen:

פתיחות (Ps. 55.22): לשון ארמי כד אמימר פתח פתחי ל' קללות (R.).

בסד (Job 13.27): הוא נקרא סדן בלשון ארמי סדנה (R.).

פתהן (Isaïe 3.17): לשון ארמי פותיא אוכמא (R.).

לשטף (Job 38.25): שער בלשון ארמי שיטפא (R. et Aruch).
ומצוררים (Josué 9.4): ל' ביקוע ל' ארמי צירא דחיטי (R.).
au grec:
היובלים (Josué 6.6): בלשון יווני קורין לדכרא יובלין (b. R. hasch. 26a בערביא; v. Gesenius, *Handwörterbuch*, s. v. יובל *Ben Jehuda*, s. v. et *Arukh* s. v.).
à l'arabe:
חיתם (Nombres 35.3): ל' צורך בלשון ערבי (R. לכל צרכיהם).
מתרפקת (Cant 8.5): ל' מתחברת בלשון ערבי (R.).
הקובה (Nombres 25.8): לש' אהל בלש' ערבי קובה (R.: אל האהל [ajouté par une main postérieure].
au persan:
בהט ושש ודר וסוחרת (Esther 1.6): מיני אבנים טובים בלשון פרס ומדי (R.).

X. Mais il va sans dire que les cas ne sont pas rares, où aucun de ces procédés ne peut être appliqué, alors notre auteur donne ou bien une explication personnelle ou bien une autre, qu'il a entendue chez ses maîtres ou chez ses collègues, ou bien encore il avoue ne pas savoir.

Explications introduites par le terme כמשמעו.
ואל (Job 5.5): י'א כְּמַשְׁמָעוֹ.
יגיד (Job 17.5): כמשמעו ל' ויגד יעקב.
זה סיני (Juges 5.5): כמשמעו (R.).
אחריך (Juges 5.14): י"א כמשמעו (R.).
עץ גבוה (Hés. 17.24): י"א כמשמעו.
par le terme לשון:
הדודאים (Cant. 7.14): ל' קדירה (R.).
בת ציון (Thr. 2.8): ל' בית הכנסת (V. Targum).
טחון (Thr. 5.13): ל' ריחים ורכב (R.).
נבוכה (Esther 3.15): ל' בכי (V. Targum I).
שגיון (Ps. 7.1): ל' שגגה (V. Ibn Ezra ויש אומרים).
ימיני (Ps. 7.1): ל' איש ימיני (V. Ibn Ezra).
השמש (Eccl. 12.2): ל' מצח (R. פדחת).
והאור (Eccl. 12.2): ל' חוטם (R.).
והירח (Eccl. 12.2): ל' הנשמה (R.).
והכוכבים (Eccl. 12.2): ל' הלחיים (R.).
ושבו העבים (Eccl. 12.2): ל' וכהו העינים (R.).
אחרי הגשם (Eccl. 12.2): ל' אחרי הדמעה (R.).

שומרי הבית (Eccl. 12.3): ל' צלעות (R.).
אנשי החיל (Eccl. 12.3): ל' שוקים (R.).
הטוחנות (Eccl. 12.3): ל' שניים (R.).
הטחנה (Eccl. 12.4): ל' הקיבה י"א ל' שוקים (V. Midr. Koheleth).
החגב (Eccl. 12.5): ל' מתנים (V. Midrasch Koh.).
כד (Eccl. 12.6): ל' ותער כדה (Gen. 24.14).
מכתם (Ps. 16.1): ל' מך ותם ל' עני—ל' מכה (R.).
איילת השחר (Ps. 22.1): ל' חיזוק—ל' הלל בן שחר (R. D'apres Ménahem).
פרים (Ps. 22.13): ל' מלכיות (R.).
זה סיני (Ps. 68.9): ל' שרף (V. Ms. Geiger: ל' הבערה; *Wissenschaftl. Zeitschrift für jüd. Theol.*, 1842 p. 420 n. 3).
באר (Ps. 69.16): ל' גהינם (Targum).
הרים וגבעות (Ps. 72.3): ל' שרים ושלטונים.
לחם אבירים (Ps. 78.25): ל' גבורים.
מחץ (Ps. 91.5): ל' שטן (R.: שד המעופף כחץ).
המעלות (Ps. 120.1): ל' תועלת ועילוי.
בשדה יער (Ps. 132.6): ל' בגבול בנימן (R.).
גולמי (Ps. 139.16): ל' דפוס.
אמך (Prov. 1.8): ל' אומתך זו כנסת ישראל (R.).
שתי בנות (Prov. 30.15): ל' שתי קולות.
סכת (Job 1.10): ל' מסגר.
בעדו (Job 1.10): ל' נגד (R.).
פרץ (Job 1.10): ל' ופרצת ימה.
ומלאך (Job 1.14): ל' שליח (Targum).
ידיהם (Job 1.14): ל' מקום ל' אצלם (Contre Raschi; v. Targum; Ibn Ezra).
ויגז ראשו (Job 1.20): ל' גזי נזרך (R.).
תפלה (Job 1.22): ל' דופי.
עור בעד עור (Job 2.4): ל' אבר (R.).
על ראשיהם (Job 2.12): ל' למעלה מראשיהם (R.).
יגאלהו (Job 3.4): ל' לחם מגואל ל' טינוף (R.).
וצלמות (Job 3.4): ל' צל מות (R.).
יחד (Job 3.5): ל' שמחה (R.).
ירחים (Job 3.5): ל' חודשים.
גלמוד (Job 3.6): ל' יחיד (R.).
עורר (Job 3.7): ל' ויאנחו בני ישראל — ל' יחיד.
לויתן (Job 3.7): ל' צער — ל' חיבור וריע.

בעפעפי (Job 3.8): ל' זהרורית (R.).
אמות (Job 3.10): ל' דבר שעבר.
חרבות (Job 3.13): ל' חורבן (R.).
ויחרפוהו (Job 3.20): ל' חיפוש (R.: מרגלים אחריו).
לחמי (Job 3.23): ל' מאכלי (V. Targum).
יגל Job 20.28): ל' גלות (R.).

par le terme לשון אחר:

ידיהם (Job 1.14): ל' א' אחריהם.

par le terme פירוש:

טיפוחים (Thr. 2.20): מצאתי כ' פ' ילדים שעודן גדילים בטיפוחי אמתם (R.).

רבים קמים עלי (Ps. 3.2): di wol können lernen, die stan uf mich = ceux, qui savent bien étudier, se dressent contre moi, כך הפירוש (R.).

מפני שמן (Isaïe 10.27): פירוש מפני חזקיהו שהוא נוח כשמן (R.).

par le terme פתרונו:

שמץ (Job 4.12): ל' מעט פתרונו לפי ענינו (R.: מקצת רוח נבואה).
יזורבו (Job 6.17): ופתרונו ל' שרב (V. *Gesenius* s. v. שרב).
יטוש (Job 9.26): ל' יעופף פתרונו לפי עניינו (R.: יפרח).
מורשי (Job 17.11): ופתרונו לפי עניינו ל' אהבה וחיבה.
ופרשז (Job 26.9): ופתרונו לפי עניינו ל' סך עליו עננו.
פרזון (Juges 5.7): וכן פתרונו ל' נבואה.
ויחפאו (II Rois 17.9): פתרונו כעניינו (R.).

par le terme כלומר:

תחנם (Deut. 7.2): כלומר לא תאמר כמה נאה גוי זה.
תחנם Deut. 7.2): כלומר לא תתן להם חנייה בארצך.
לשלמה (Cant. 1.1): כלומר לה'ק'ב'ה' כמ' למלך שהשלום שלו (R.).
השולמית (Cant. 7.1): כלומ' שלימה ותמימה (R.).
פלוני (Ruth 4.1): כלומ' מכוסה בלי שם (R.).
החגב (Eccl. 12.5): כלו' זה התחת.
לחלכה (Ps. 10.8): כלו' לחיל העני ישראל (V. R. d'aprè̀s Menahem).
חלכאים (Ps. 10.10): כלו' חיל ישר' העניים והנדכאים (R.: נשברים).
מות (Ps. 55.5): כלו' זה מלאך המות.
אמוט רבה (Ps. 62.3): כלו' זה הגהינם כלו' שלא אבוא בגהינם (R. d'aprè̀s le Midrasch).
בערבות (Ps. 68.5): כלו' שם של אחד משבעת השמים (V. Ibn Ezra).
שער (Ps. 68.22): כלו' זה עשו הנקרא איש שעיר (R.).

אך טוב (Ps. 73.1): כלו' אך אחד משמות ה'ק'ב'ה' (R. ה'ק'ב'ה' טוב להם).

למורא (Ps. 76.12): כלו' לה'ק'ב'ה' שהוא נורא (V. Ibn Ezra au nom de R. Mošeh).

לחם אבירים (Ps. 78.25): כלו' שאינם צריכים לנקביהם (R.).

לחם אבירים (Ps. 78.25): כלו' שנכנס המן באבריהם (R.).

אמצת (Ps. 80.16): כלו' זה ישראל.

רהב (Ps. 87.4): כלו' זה מצרים (R.).

מחלת (Ps. 88.1): כלו' כנסת ישראל שהיא חולת אהבה (R.).

הלמתים (Ps. 88.11): רשעים כלו' אף בחייהם קרויים מתים (R.).

באבדון (Ps. 88.12): כלו' בגהינם (Targum).

עקבות (Ps. 89.52): כלו' סופי מלך המשיח (R.).

חשבתי (Ps. 119.(?)): כל' חשבתי הפסד מצוה כנגד עברה.

משך (Ps. 120.5): כל' זה מלכות אדום.

ושוכר כסיל (Prov. 26.10): כלומ' סוגר מזל כסיל (R. מדרש אגדה).

חתמו (Job 24.16): כלו' חותמים בתי העשירים.

בלהות (Job 24.17): כלומ' שדים המבהילים אותם (R.).

שבענה (Job 42.13): כלומ' שני פעמים שבעה בנים (R.).

ולצנינים (Josué 23.13): כלומ' מחנות המקיפות אתכם (R.).

תמנת סרח (Josué 24.30): כל' הפירות הם מסריחין מרוב שומן (R.).

par un pronom démonstratif, זה, זו, הוא:

אורך (Ps. 43.3): זה מלך המשיח שנדמה לאור (R.).

ואמיתך (Ps. 43.3): זה אליהו הנביא שהוא נביא אמת (R.).

שושנים (Ps. 45.1): זה תלמידי חכמים (R.).

שושנים (Ps. 69.1): זה ישראל (R.).

זרזיר מתנים (Prov. 30.31): זו מדי ופרס שזירזו מתניהם והרגו בלשצר (R.).

לפיד בוז (Job 12.5): הוא לפיד של גהינם (R.).

נחש בריח (Job 26.13): י"א נחש בריח זה פרעה (R.).

אבי (Job 34.36): אמר אליהוא ה'ק'ב'ה' שהוא אבי הלוא יבחן איוב (R.).

לאיתן האזרחי (Ps. 89.1): זה אברהם אבינו כך דרשו רבותינו (R.).

איש לשון (Ps. 140.12): זה עשו (R.).

אמך (Prov. 1.8): ל' אומתך זו כנסת ישראל (R.).

אגור בן יקא (Prov. 30.1): זה שלמה המלך שאסף החכמה והקיאה (R. כך פירשוהו חכמי').

תיש (Prov. 30.31): זה מלך יון (R.).

בני חלוף (Prov. 31.8): אילו יתומים שחלפה עזרתם (R.).

תימא (Job 6.19): זה ארץ ישמעאל (R.).

במורדי אור (Job 24.13): הם דור המבול (R.).

רם (Job 32.2): זה אברהם (R.).
רחב ולא מוצק (Job 36.16): זה גהינם רוחב תחתיו (R.).
בית יער הלבנון (I Rois 7.2): זה בית המקדש (Source ?).
עץ לח (Hés. 17.24): זה צדקיהו (R.).
עץ יבש (Hés. 17.24): זה יהויכין (R.).
כדמה (Hés. 27.32): זה עשו (R.).
באדיר (Isaïe 10.34): זה חזקיהו (R.).
אמיר (Isaïe 17.6): פי' זה סנחריב (R. ורבותינו דרשו).

sans terme introductif:
אל תשחת (Ps. 57.1): כך קרא דוד שם המזמור על שהיה קרוב למות (R.).
לועז (Ps. 114.1): כל לשון שאין לשון הקודש (R.).
המעלות (Ps. 120.1): שהיו אומרים אותו להעלות תהום (R. ורבותינו אמרו).
המעלות (Ps. 120.1): היו אומרים אותו על מעלות העזרה (R.).
אבני השדה (Job 5.23): בני אדם משגעים דומין לזאבים (R.: מין אדם הן).
המשל (Job 25.2): מיכאל (R.).
ופחד (Job 25.2): גבריאל (R.).

par כמו:
אלמני (Ruth 4.1): כמ' אלמון בלי שם (R.).
טיפוחים (Thr. 2.20): כמ' טיפחתי (V. Ibn Ezra).
כפים (Thr. 3.41): כ' על כפים כסה אור (R.).
ואחלצה (Ps. 7.5): כ' ויקח חליצתם (V. Juges 14.19).
פתיחות (Ps. 55.22): כ' את ארץ נמרוד בפתחיה (R. d'après Menahem).
לאדוני (Ps. 110.1): כמ' לאדון זה אברהם (R. רבותינו דרשוהו).
למואל (Prov. 31.1): כמו אל אל הדברים שאמר ה'ק'ב'ה' (R. . . . לאל דברים לשמו של ה'ק'ב'ה').
סכת (Job 1.10): כ' הסר מסוכתו ל' מסגר (R.).
ויען (Job 3.1): כמ' ותען להם מרים (R.: ויצעק).

par איני יודע:
חלבנה (Exode 30.34): מין בושם ואיני יודע מה הוא (R.: וקורין לו גלבנ"א it faut sans doute admettre que notre auteur ne connaissait pas le mot גלבנ"א, ce qui prouverait bien qu'il était Allemand).

par יש אומרים:
לידותון (Ps. 39.1): י"א שם אדם המשורר (R.).
זה סיני (Ps. 68.9): י"א זה ממש.
רפאים (Ps. 88.11): י"א שרפו ידיהם מן המצות (R.).
ויתכו (Job 3.23): י"א ל' שפיכה (R.).

תרועה (Job 8.21): י"א ל' תרועה ממש.
אֵיבָה (Job 9.26): י"א ל' פירות (V. Ibn Ezra).
לקחי (Job 11.4): י"א ל' מנהגי.
קדים (Job 15.2): י"א ל' קדים (V. Targum).
גלדי (Job 16.15): י"א ל' עור (V. Ibn Ezra).
עטיניו (Job 21.24): י"א כלי מכנס החלב (Cf. R.).
ותעלומה (Job 28.11): י"א ותעלומה שם חלון (R.).
מרוז (Juges 5.23): י"א כך שם כוכב (R.).
מריעים (Juges 14.11): י"א שושבינים (R.).
בצלצח (I Sam. 10.2): י"א כ' בלינת ה'ק'ב'ה' (R.: בתוספתא דסוט').
תחכמוני (II Sam. 23.8): י"א ל' סנהדרין (R.).
המשנה (II Rois 23.4): י"א ל' בית המדרש (Source ?).
תאנה (Jér. 2.24): י"א ל' קינה (R. ד"א ל' יללה).
במות התופת (Jér. 7.31): י"א ל' תוף וחליל (R.).
משי (Hés. 16.10): י"א ל' צבעונין (V. Targum et Raschi).
ושוליו (Isaïe 6.1): י"א כמו משרתיו.
בשלכת (Isaïe 6.13): י"א שער היה בירושלים ושמו שלכת (R. ויש פותרין).

plusieurs explications:

אליל (Job 13.4): כמ' אל תפנו אל האלילים ל' אל (R.).
גיד של צואר ושמה אליל (R.).
הלאל (Job 13.7): ל' עבור זה.
ל' אל א'.
כפך (Job 13.21): כמו ואכפי עליך יכבד ל' דוחק (R.).
ל' הך בכפך (R.).
יסכון (Job 15.3): כמ' ובקע עצים יסכן בם ל' חימום (R.).
ל' לימוד (R.).
עויל (Job 16.11): כמ' עמי נוגשיו מעולל ל' ליצנות (R.).
כמ' ישלחו כצאן עוילהם ל' נערים (R.).
אונו (Job 18.12): כל' מצאתי און לי ל' כח.
ל' בניו (R.).
אחזה (Job 19.26): כמ' ואתה תחזה ל' ראה (R.).
כמ' ויאחזו אותו ל' לקח.
בפלגות (Job 20.17): ל' פלגי מים (R.).
אין דעמא גן עֵדֶן (in dem G. E.) (R.).
יסכן (Job 22.2): ל' הנאה וזה הראשון (R.).
ל' לימוד וזה השני (R.).
ועורקי (Job 30.17): ל' וינס תרג' וערק (R.).
ל' אבריי.

ל' גידים (R.).
כאובות (Job 32.19): ל' נודות (R.).
ל' כדים.
תנואת (Job 33.10): כמ' ואם הניא אביה אותה ל' מניעה.
כמ' תואנה הוא מבקש ל' עלילה (R.).

XI. Souvent notre auteur se facilite la tâche en se contentant de dire qu'il s'agit d'un nom propre, d'une espèce d'animal, d'un nom d'oiseau etc.

בגיא מלח (Ps. 60.2): שם מקום (Targum).
בצלמון (Ps. 68.15): י"א שם מקום וי"א שם הר.
תמחץ (Ps. 68.24): שם כלי הוא ששואבין בו מים מן הבור (R. d'après jer. Ab. zar. V. fin).
הגתית (Ps. 81.1): כלומ' שם כלי שיר הבא מגת (R.).
מחלת (Ps. 88.1): שם כלי שיר.
לאיתן האזרחי (Ps. 89.1): כך שם אדם המשורר (R.).
מקטב (Ps. 91.6): שם שטן ההולך בצהרים (R. שם שד).
קדר (Ps. 120.5): שם אומה (V. Ibn Ezra).
כמכירי (Job 3.4): כלומר שם שֵד ששמו מרירי (R.).
איבה (Job 9.26): שם נהר (R.).
ראמות וגביש (Job 28.18): שאין למוצאם (!) שמות אבנים טובים (R.).
וכחול (Job 29.18): שם עוף שלא אכל מעץ הדעת ולא נקנסה עליו מיתה (R.).
וממזרים (Job 37.9): חדר יש בשמים ושמו מזרים (R.: אוצר יש).
אף ברי (Job 37.11): שם מלאך הממונה על המטר (R.).
כימה–כסיל (Job 38.31): שם מזל (Ibn Ezra: כוכבים הם).
ועיש (Job 38.32): שם כוכב גדול שבמזל כימה (R.).
חסידה ונוצה (Job 39.13): שמות של עופות (R.).
נץ (Job 39.26): שם מלאך י"א שם עוף (R.).
מאדם העיר (Josué 3.16): כך שם העיר (R.).
מרוז (Juges 5.23): כך שם איש י"א כך שם כוכב (R.).
בקרקר (Juges 8.10): שם מקום (R.).
בארומה (Juges 9.41): שם מקום.
בן דודו (Juges 10.1): כך שמו (R.).
בארץ טוב (Juges 11.3): כך שמו (V. jer. Schebiith VI,2).
בעל ברית (Juges 8.33): שם עבודה זרה (R.).
אילון מעוננים (Juges 9.37): כך שם המישור (R.).
גדעום (Juges 20.45): שם מקום (R.).
בצלצח (I Sam. 10.2): שם מקום (V. R.).

נבל וחליל (I Sam. 10.5): מיני זמר (V. Targum).
באפס דמים (I Sam. 17.1): שם מקום (R.).
מבור הסירה (II Sam. 3.26): שם מקום (R.).
בעל פרצים (II Sam. 5.20): שם מישור (R.).
במנענעים ובצלצלים (II Sam. 6.5): מיני כלי זמר (V. Kimchi).
גורן נכון (II Sam. 6.6): שם מקום (V. Kimchi).
בלו דבר (II Sam. 9.4): שם מקום (V. Kimchi).
רבה (II Sam. 11.1): שם מקום (V. Targum).
ואיש טוב (II Sam. 10.6): שם הארץ היה טוב (V. jer Scheb. VII, 2 ad Juges 11.3).
חלאמה (II Sam. 10.17): שם מקום (V. Kimchi).
בתבץ (II Sam. 11.21): שם מקום (V. Targum).
עטרת מֹלכים (II Sam. 12.30): שם עבודה זרה (V. R.).
עד בחרים (II Sam. 16.5): שם מקום (V. Kimchi).
בצלע (II Sam. 21.14): שם מקום (V. Targum).
תחכמוני (II Sam. 23.8): כך נקרא שמו על שם חכמתו (V. bab. Moëd qaton 16b).
עדינו העצני (II Sam. 23.8): כך שמו כשעוסק בתורה כורך ומקשר עצמו כתולעת כמו התקשר מעדנות כימה וכשהוא יוצא למלחמה קשה כעץ והורג שמונה מאות פעם אחת (bab. Moëd q. 16b).
בן דודו (II Sam. 23.9): כך שמו (R.).
מקבצאל (II Sam. 23.20): שם מקום (V. Targum).
מאיתן האזרחי (I Rois 5.11): אברהם אבינו (R. d'après Pesiqta).
והימן (I Rois 5.11): משה רבינו (R. ib.).
כלכל (I Rois 5.11): יוסף (R. ib.).
צורי חרש (I Rois 7.14): כך שם העיר (V. Targum).
ארצא (I Rois 16.9): שם האיש (V. Kimchi).
סכות בנות (II Rois 17.30): כך שם ע"ז (R.).
תופת (II 23.10): שם ע"ז הוא (R.).
הר המשחית (II Rois 23.13): זה הר הזיתים ואצל ע"ז כינה שמו לגנאי (R.).
כערבי (Jér. 3.2): שם אומה על שם שהם שכונים בערבה (R.).
חסידה Jér. 8.7): שם עוף (R. ציגיניאה בל').
ותור (Jér. 8.7): שם עוף.
יובל (Jér. 17.8): זה שם הנהר.
האי (Jér. 25.22): כך שמו.
הנחלמי (Jér. 29.24): שם מקום (R.).
המשגב–מדמן (Jér. 48.12): שם מקום (R.).

חורונים (Jér. 48.5): שם מקום (R.).
בל חת מרדך (Jér. 50.2): שם אומות.
חמניכם (Hés. 6.6): מיני צלמי ע"ז (V. Raschi).
תחש (Hés. 16.10): מין חיה (V. Raschi: tesson).
פקוד ושוע וקוע (Hés. 23.23): שמות מדינות הם (R. et Targum).
רמות וכדכר (Hés. 27.16): שמות של אבנים טובות (R.).
מינית (Hés. 27.17): שם מקום (R.).
שמה (Hés. 47.9): י"א שם העיר שמה.

XII. Dans certains cas, plutôt rares, notre auteur a recours à la Guematria, au Notaricon, aux Rāsché Téboth et à l'Ath Basch:

למות תוצאות (Ps. 68.21): צדען טודן אזא ויל אז ת'ו'צ'א'ו'ת' טואט.

Je suppose que l'auteur a voulu dire: Jusqu'aux morts, c'est à dire jusqu'à la résurrection des morts, qui, d'après une ancienne tradition, aura lieu en l'an 6000 après la création du monde, il y a encore autant d'années que compte le mot, c'est à dire 903, de sorte, que le scribe aurait vécu en l'an 6000–903 = 5097 après la création ou en 1337 de l'ère chrétienne.

ועל בן אמצת (Ps. 80.16): כלו' זה ישראל אמצת בגימט' ישראל (R. ועל עשו).

בכלח (Job 5.26): בגימט' ששים (V. Rasch: . . . ורז"ל פירשו).

שבעה (I Sam. 2.5): שמואל כלומ' שבעה בגימט' שמואל.

וכומז (Nombres 31.50): דפוס של בית הרחם נוטרייקון כאן מקום זימה (main postérieure).

ומלך אלקום (Prov. 30.31): ראשי תיבות אוטא לודוויק קונרט ורידריך משיח.

ששך (Jér. 25.26): זה בבל בא"תב"ש (R.).
לב קמי (Jér. 51.1): זה כשדים בא"ת ב"ש (R.).

L'exégèse biblique de l'auteur de notre manuscrit, qui était, sans doute, celle de la plupart des Juifs d'Allemagne avant les persécutions du XIV^{e} siècle, montre donc une influence très prononcée de celle de Raschi ainsi que de celle des lexicographes espagnols généralement répandus à cette époque. Par contre, notre auteur ne paraît pas avoir connu ni Abraham ibn Ezra ni David Kimchi, bien que ses explications rappellent souvent celles de ces deux commentateurs.

Sauf quelques rares exceptions, on peut dire que le caractère général de cette exégèse ressemble beaucoup à celui de l'exégèse de Raschi. L'auteur s'efforce, par tous les moyens possibles, à trouver le sens naturel des mots et même là, où il se sert du Midrasch, il le fait presque toujours pour trouver une explication rationelle.

Qu'il me soit permis ici encore d'adresser tous mes remerciements à la Direction de la Bibliothèque de Karlsruhe d'avoir bien voulu mettre à ma disposition ce manuscrit si précieux.

THE SERMONS OF AZARIAH FIGO[1]

By ISRAEL BETTAN, Hebrew Union College, Cincinnati, Ohio

I

IF Jewish preaching in sixteenth-century Italy found in Judah Moscato its most brilliant exponent and guide, it was the voice of Azariah Figo that best spoke the thought and most authentically reflected the life and spirit of the seventeenth century. Italy, the cradle of the Renaissance, reared them both; the aroma of the new age clung to their very garments. Judaism, with its rich lore, its life-encompassing ideals, its time-tested discipline, they championed with equal force and ardor; the Jewish spirit vibrated in all their work. Both were master-builders, divinely gifted preachers, whose art imparted to the Jewish sermon fresh vitality and power and significance, investing it with a high degree of literary excellence. Yet, withal, in their respective preaching, they manifested mental attitudes or moods of such opposite tendencies as to set them widely apart in outlook and aim even as they were clearly separated in time. Moscato joyously accepted the new spirit abroad in the land. He felt quickened and strengthened by the revived interest in the secular learning of the ancient world. He sought to appropriate it, to distil from it an essence that would have the power to persuade men and win them to a more loyal, because more intelligent, adherence to the teachings of Israel's Torah. Figo, on the other hand, while in his early youth he revelled in the newly-found knowledge, and apparently never wholly freed himself from the temptation to drink from foreign cisterns, soon began to chafe under the dominance of his youthful preoccupations. He discovered, to his great amazement, that his excessive devotion to the "handmaid" served only to estrange him from the true "mistress," Jewish learning as embodied in the Talmud and kindred works. And so he violently wrenched himself away from the intellectual pursuits of an earlier day and calmly retreated within the "four ells of the law," there fighting valiantly to ward off the seductive charms of the wily temptress.

---

[1] Azariah Figo was born in Venice in 1579. During his childhood and early youth he attended the schools of his native city where he received a tolerably good secular education. But the acquisition of secular knowledge did not long satisfy the inner cravings of his soul. He thirsted for Jewish learning, for a thorough mastery of the Talmud and its compendia. To attain this end, he enrolled in the local Yeshiva, presided over by the well known Talmudists, Samuel Judah Katzenellenbogen and Ben Zion Zarfati (Abba Apfelbaum, רבי עזריה פיגו, p. 11). In this Yeshiva he remained, deeply engrossed in his Jewish studies, until 1607, when, though only a young man of twenty-eight, he was elevated to the rabbinate of Pisa. There he labored for twenty years, teaching and preaching and ministering to the other various needs of his congregation, as well as preparing his dialectic commentary to the ספר התרומות of Samuel ben Isaac Ha-Sardi, under the modest title גדולי תרומה, implying that the worthiest of his comments were but the direct offspring of Ha-Sardi's work (גדולי תרומה, הקדמה, Zolkiew, 1809, p. 4b). Meanwhile his reputation as profound scholar and eloquent preacher spread over Italy so that in 1627 he was recalled to his birth-place to assume the spiritual leadership of the Sephardic congregation (בינה לעתים, Lemberg, 1797, Ser. 34). It was here in Venice that he completed and saw through the press his halachic commentary, (בל"ע, Ser. 35), and it was also here that some of his best sermons were preached. In 1647, while in Rovigo, on a peace mission (Apfelbaum, p. 75), he was suddenly seized by some severe illness from which he never recovered. A year after his death, in 1648, seventy-six of his sermons, bearing the title of בינה לעתים, were published in Venice, a collection that forms a most precious contribution to Jewish homiletics.

"God knows and is my witness," he declares in a notable passage, "that as soon as I emerged from my early youth, during which time, as if to add to the natural frivolousness that characterizes this period of life, I passionately pursued such vain things as secular studies of all kinds, my eyes were suddenly opened, by the grace of God, and I saw myself covered with shame for having placed the accidental above the essential. Yes, I felt thoroughly ashamed of myself for having slackened my interest in the fundamental studies, such as the Talmud and its allied branches, studies which, revealing to us the divine laws that must rule our lives, have the power to instil in us true notions of what constitutes spiritual growth and happiness, to attain which is, after all, our sole task in the world. But while bemoaning my remissness in the past, I could not but also dread the dismal prospect stretching before me. What if the enchantress should continue to hold me in her thrall and deprive me forever of the priceless love of my true affinity?"

"And so I resolved to put away this handmaid and give myself completely to my true mistress, hoping by this total absorption in the Torah, to crowd out the very memory of the sins of my youth. Henceforward I devoted my energy to the mastery of the Jewish sources, attending with strict regularity the Yeshiva of my native city, presided over by the local rabbis. Thus, closely confined within the four ells of the law, I labored diligently, until in the course of time, by the graciousness of God's favor, I was called to Pisa to minister to this celebrated community, though still young in years and of limited experience. There I remained for many years, amidst those truly worthy and pious people, regretting only the scarcity of men of Jewish learning and of those books to which I had grown attached."[2]

Figo voices in these lines a familiar twilight mood such as must have enveloped the heart of many a disenchanted youth of his day. The Renaissance first broke upon the horizon of the Italian Jew like a roseate dawn, dispelling the dark shadows of the past, and flooding his life with new light and hope and joy. Humanism, with all that it implied, spelled for him greater freedom, broader tolerance, deeper sympathy, the essence and refinement of a higher culture. He greeted it with the rapture of an ardent lover. But this triumphant mood was destined to suffer a speedy eclipse. The hosts of reaction are never far behind the vanguard of progress. They are camp followers for a time, awaiting the moment most auspicious for an organized attack. The schism in the Church created by the Reformation was the signal for the Catholic hierarchy to marshal its forces and by such well known devices as the censorship of books and humiliating personal restrictions, to suppress all forms of infidelity, of which the Jew, of course, was deemed the most guilty. And so a series of Popes arose, such as Julius III, Paul IV, Pius V, Gregory VIII, and Clement VIII, who revived severe restrictions long dead and introduced others of their own malicious invention, all calculated to degrade the Jew, to destroy the chief sources of his strength, to break down his will to live. Under such circumstances what more natural than that the sensitive Jew should feel impelled to withdraw from a culture that is as ephemeral as it is spurious and hasten to his own secure and permanent abode, the "four ells of the law?"

---

[2] גדולי תרומה, הקדמה, p. 3c.

This grand renunciation, however, in the case of Figo, was made either too late or not quite complete enough to affect the essential character of his preaching. His sermons still bear the imprint of the new impulses that swayed men's hearts in the Italy of his day. That striving after beauty of thought and perfection of form, in emulation of the works of antiquity; that sense of the continuity of history, the uniformity of natural law, and the identity of human nature; that passion for inquiry and criticism; that keen awareness of the external world of nature and of the currents and problems of contemporaneous life and thought—all salient features and finest offshoots of the new spirit of the age—we find to a marked degree inherent in Figo's homiletical work. To be sure, the Catholic reaction, unleashing the dark and sinister forces of a relentless hierarchy, had cast a pall upon his spirit even as it had shrouded Jewish life with gloom and despair. The galling restrictions, the cruel expulsions, the impious conflagration of books produced their customary effects. They hurled the Jew back upon himself to retreat within himself, cleaving all the more tenaciously to the products of his own spirit, the treasures of his own past. But, while intensifying the devotion of the intellectual Jew to his own literature, a consummation least contemplated, the papal decrees could not contract an horizon widened by influences over which the Church had no control, or stifle impulses and tendencies generated by forces the Church itself dreaded to face. Nor could Figo perform the miracle of liberating himself completely from the interests and influences that moulded his life and outlook in his younger days. He might drown the memory of the sins of his youth in the deep "sea of the Talmud," but he could not eradicate from his consciousness the enriching experiences of his youth. He might cast off the "handmaid" to lavish all his affection upon the "mistress," but he could not obliterate the vivid impressions wrought on his plastic mind by the avowed infatuation of his early youth. His work, naturally enough, suffered from these internal spiritual conflicts, these psychic inhibitions; but the originality of his mind remained unimpaired. The mantle of Moscato did not fall upon his shoulders; but his own spirit and creative power placed him in the front rank of the very greatest of Jewish preachers. In fact, to subsequent generations, not Moscato, but Figo, stood forth as the unexcelled master of the preacher's art; not the נפוצות יהודה, but the בינה לעתים, embodied the supreme pattern of the Jewish sermon.

II

The בינה לעתים comprises seventy-six sermons, preached on various occasions and on diverse religious themes.[3] While, in the main, the sermons revolve around the feasts and fasts of synagogal observance, as only twelve of the sermons deal with purely ethical themes, the volume unfolds before our gaze the larger panorama of Jewish life and thought in their manifold aspects and relations. For the religious institutions of the Jew are deeply rooted in the stirring events and spiritual triumphs of the past; to lay bare their inner significance, as becomes the true preacher, is to interpret the soul of the Jew, with its hopes and aspirations, its ideals of love and of duty, its whole moral reaction to the forces and influences of life. Hence, Jewish preachers in all ages, even when expounding the lesson of the day only on some special occasion, contrived to make their message comprehend, in the totality of their preaching, a large area of religious thought and ethical obligation. And this is especially true of Figo, a preacher of such singular intellectual power and spiritual insight, whose בינה לעתים reveals his true kinship with the children of Issachar, "men who had understanding of the times, to know what Israel ought to do."[4]

---

[3] The Venice edition, 1648, affixes, by mistake, the numeral 75 to the last sermon of the volume. The error arose from the careless repetition, by the printer, of numeral 73, making it head the seventy-fourth as well as the seventy-third sermon. The Lemberg edition, 1797, the one used for reference in this study, indicates a total of seventy-eight sermons but actually contains only seventy-six. Here, the mistake may have been inadvertent or wilful. Since the publisher decided to divide the book into two separate volumes and to transfer the first two sermons, with which the Venice edition begins, to the opening of the second volume, it may well be that in the process he failed to adjust the numbers to the new disposition, designating the first sermon in the second volume as thirty-four instead of thirty-two. On the other hand, it is also likely as Apfelbaum surmises (ר' עזריה פיגו p. 72), that the publisher sought by this legerdemain to augment, for the prospective purchaser of the book, the impression of its bulkiness.

In fact, it is Figo's conviction that to understand the times and know what Israel ought to do constitute the chief function and most difficult task of the preacher. For the times, Jewishly conceived, are fixed and specific and of considerable diversity. There is a time of love and of singing, a time of trouble and of mourning, a time of the return of the year and of judgment, a time to seek the Lord, a time to act, a time to keep silence, a time to be gracious, a time for peace.[5] And to know what Israel ought to do at such times and have the courage to summon them to their tasks in words of earnest exhortation—is not this the most solemn call that comes to Israel's preachers?[6] Books have their uses. Much valuable information and instruction are contained in their pages. But their effectiveness is as nothing compared with the certain and instantaneous emotional responses awakened by a message brought by word of mouth. When the ear listens to instruction emanating from a vital personality, other effects, besides those flowing from its content, make themselves felt, such as the emotional quality of the speaker's voice, the impressiveness of his appropriate and graceful gestures, and other similar aids to effective speech. Propelled by this additional force, the spoken word will sink deep into the heart of the hearer and sprout forth in concrete forms of conduct.[7] This is the end for which the preacher must always labor, to guide others in the path of spiritual wellbeing.[8] This should be the main burden of every sermon, no matter what the occasion on which it is preached, to stimulate in the hearer a passion for self-improvement and increased spiritual power.[9] And this, too, is the supreme need of the hour, that the people shall learn to turn a more attentive and sympathetic ear to vigorous and fearless exhortation, and that the preacher shall not be deterred by any craven timidity from proceeding with his task as monitor and guide in face of the all too evident distaste of the many for such outspoken and courageous preaching.[10]

---

[4] 1 Ch. 12.33.

[5] The framework of the בל"ע is of unique design. It opens (Lemberg edition) with a group of seven New Year sermons, bearing the caption of עת משפט, and is followed by a series of six sermons on repentance, headed עת תשובת השנה. Then follow, in succession, four Succoth sermons, עת האסף; two Hanukkah sermons עת בית ה'; three Purim sermons, עת נקמה; nine Passover sermons, עת צאת; two special sermons, עת לדרוש, (the Venice edition opens with these two sermons), one being an installation sermon, preached in Venice when he assumed the leadership of the Sephardic congregation, and the other a sort of thanksgiving sermon, preached on the occasion of the publication of his גדולי תרומה; eight sermons preached on texts from the sayings of the Fathers, עת לעשות; five Shabuoth sermons, עת דודים; five sermons dealing with the destruction of the Temple, עת צרה; four sermons preached on the Sabbath of Comfort and five sermons preached in the month of Elul, עת קץ; three sermons on prayer, עת הזמיר; four sermons on carefulness in speech, עת לחשות; four sermons on benevolence, עת לחננה; four funeral sermons, עת לספוד; and one sermon preached at a circumcision ceremony, עת שלום.

[6] Ser. 5, p. 7d.

But this critical attitude toward the shortcomings of others, it must be ever borne in mind, imposes upon the preacher the gravest of all responsibilities, that of keeping his own character and conduct free from blemish and reproach. One dare not rebuke others for their faults and failings, exhorting them to live a life of spotless purity, unless he has purged his own soul of its impurities and imperfections.[11] Besides, what makes for true effectiveness in preaching is not so much the exhortation of the sermon as the example of the preacher. His own life is the best homily; his own deeds speak most impressively.[12] "Whenever I attempt to preach to you, dwelling upon the evil that exists in your midst and deigning to proffer a remedy for its many ills, I am overcome with fear and begin to tremble . . . For the best preacher is a man's upright life. That speaks to the heart, even though it utter not a sound. What the preacher does, and not what he says, makes a lasting impression. How then can I presume to criticize your conduct, when I myself am lacking in worth, poor in good deeds, and possessed of but little knowledge and understanding? How dare I admonish others when I myself stand in greatest need of such admonition? My only justification for lifting my voice at all is that I am my own best audience. I preach mostly to myself. If I address myself to others it is because I deem it the best way of impressing the truth of the lesson upon my own soul. Besides, after voicing my convictions in the hearing of others, as I do when I preach, I am no longer free to act in any but a consistent manner; I am thus constrained to practice what I preach."[13]

---

[7] P. II, Ser. 48, p. 16c: אזן שומעת תוכחת חיים בקרב חכמים ילין—Prov. 15.31.

[8] P. II, Ser. 77, p. 53d.

[9] P. II, Ser. 76, p. 52d.

[10] P. II, Ser. 49, p. 17d.

[11] P. II, Ser. 49, p. 18a.

[12] P. II, Ser. 37, p. 4c.

The conception of the sermon as a criticism of life, with individual and social betterment as its main objective, is of very ancient origin. The prophets of Israel made it the guiding motive of their soul-stirring message. The early Haggadists, with whom the broader interpretation of the scriptural lesson was of primary concern, never failed to draw their analogies from the political and social conditions of the day and to apply their conclusions to individual character and conduct. Later preachers, even the most purely intellectual among them, never hesitated to criticize the moral views and habits of their contemporaries with the utmost vigor and candor.[14] But Figo, as we have seen, viewed the exhortation with its attendant critical analysis of indefensible conditions and offensive practices as an indispensable ingredient of the effective sermon, and, while his published sermons fail to exhibit a rigid uniformity in the employment of this method, he yet boldly exemplified in his preaching what he so strongly advocated.[15] Few evils that menaced the religious and moral stability of his generation escaped his attention, and he discussed them in his sermons with a frankness and fearlessness the most courageous of latter day preachers might well envy. Was it the sensuality of the day that jarred the chasteness of his nature? He did not restrain his words within the bounds of politeness, but boldly asserted that, as regards sexual immorality, it is not the gross act alone, but all other irregularities, that must needs be condemned. "Take the not uncommon habit of perpetually staring at women, whether they be married or single, an indulgence that must inevitably lead to graver offences—is there no need for improvement here?... We do not seem to appreciate the gravity of this sort of sexual looseness with its unwholesome consequences. How often, in the streets of the city, do we see men gaze intently upon the passing forms of married women. Why, let a bride just emerging from under the canopy, start on her way to the Synagogue, attended by her bridesmaids, and hosts of men will range themselves in rows, all along the line of march, feasting their eyes on the beauty of their figures and the splendor of their attire."[16] Or, was it the self-indulgence, the love of luxury, the extravagance of the people, that claimed his attention? He pronounced his judgment with equal force and candor. "We are still lacking in humility and proper submissiveness; hence the prolongation of the period of our exile. We are fully aware of our subjection in the world, but we do not conduct our lives as becomes subjects of other nations. We should shun pleasure and power. In matters pertaining to our physical comforts, such as food and raiment and house decorations, we should give some indication of our lowliness and anguish of spirit. But we act otherwise. Though in exile, we live like royal personages. Our homes are stocked with abundance. We dress in garments of the finest fabric, aping the princes of the land. Our tables are laden with the dainties of kings, unsurpassed by the sumptuous banquets of Solomon. We live on a scale befitting the heyday of our national life. There is no want that remains unsatisfied."[17] Or, was it the widespread indifference to ritual observance that vexed his spirit? He flayed it mercilessly. "But we who are designated as men, we in whose heart is implanted the divine law, offer praise unto God before we partake of any food and after we have eaten, thus acquiring ownership, as it were, in the produce of the earth. Unfortunately, our generation has grown extremely lax in the observance of these ritual practices. Men will enter fruit-stores and help themselves to grapes or figs or pomegranates, without giving a thought to the prescribed blessing, as though the world had no Master. I recall the experience I once had with one of our most prominent members. He reached for some fruit in my presence and fell to eating it without reciting the required blessing. I remonstrated with him, expressing my surprise that a man like him should be guilty of such an omission. His only reply was that the habit of ignoring this practice is so strong upon him that he is never conscious of the omission. However, as he had not yet consumed all of the fruit before him, he condescended to conform to the law before partaking of the rest. But no sooner had he finished than he began to take leave without troubling himself about the special grace to be recited after such light refreshment. I was not slow to call his attention also to this omission. He looked bewildered, not knowing what I had reference to. Of course, he had heard of grace after meals, but he did not seem to know anything of this special blessing. And so I recited it to him. He could not have looked more startled had some new revelation flashed upon his vision. This is what we are getting when we habitually treat with indifference the requirements of our ritual law! And what may we expect of the young generation, seeing that the parents who rear them eat and drink like heathen without blessing God's name?"[18] Nor did the grasping business world, with its love of gain and want of sympathy, elude the sharp sting of his fearless castigation. "We can readily see that the cause of our financial troubles (incident to high taxation) is none other than the exorbitant interest rates levied on loans. What plea could even an Abraham make on behalf of this city, saturated as it is with the blood of the poor? These hapless ones, driven by hard circumstances to borrow money from the rich of the land, are devoured bodily by the usurious rates exacted from them. And so prevalent has the practice become that few seem to betray any real consciousness of its nefarious character. Yet, let a group of Jews enter a non-Jewish restaurant and partake of ham or any other prohibited viand, and the whole community would be most ready to stone them to death! . . . And what shall we say of those who piously shrink from the more patent forms of usury, but who have no scruples to issue loans on homes in which they live rent-free, or sublet and pocket the proceeds, until the entire debt is paid off? . . . Even the customary dealings in foreign exchange, some forms of which are free from objection, present, in their other forms, aspects of doubtful legality of which an otherwise upright merchant may be unaware. My contention is that in all such matters, the religious leader should be consulted that he might guide the people in paths clear of all possible stumbling blocks."[19]

---

[13] P. II, Ser. 66, p. 40.

[14] See for example, Isaac Arama, עקדת יצחק, Vol. 1, Portal 20, p. 227, Warsaw, 1904—"How often have I endeavored to emphasize this point, especially in its bearing on the problem of prostitution which, sad to say, the leaders of our generation treat with such leniency. Why, in some communities these prostitutes are welcomed, even subsidies from public funds are allotted to them, because it is claimed, they save the unmarried or the unintelligent from the graver offense of having sexual relations with married women, or from the danger incident to the molestation of non-Jewish women, thus choosing the lesser of two possible evils. And time and again, in the presence of these leaders, have I given expression to my own adverse views regarding this matter, contending that there is a vast difference between a sin of which an individual is guilty in the secrecy of his private life, and a sin countenanced by the community at large. In the former case only the individual sinner is subject to punishment, whereas, in the latter case, however small the offense, it is the community that draws guilt upon itself and is liable to certain punishment."

---

[15] There is ample evidence that many of his sermons were either written or rewritten after delivery. He informs us on several occasions that some thoughts expatiated on in the spoken discourse, he deemed unnecessary or unfit for wider publicity. "I dwelt at some length on many of the details of this subject, which, however, I do not care to repeat in writing" (P. II, Ser. 77, p. 54b). "I jot down here only the main points, though they formed but a small part of what I then said" (Ibid p. 54c). "In this connection, I took occasion to exhort the people with reference to the sins to which all the bodily members individually are subject, but I shall refrain from mentioning them in writing" (P. II, Ser. 48, p. 17a).

[16] P. II, Ser. 66, p. 41b.

---

[17] P. II, Ser. 50, p. 18d.

But, while Figo regarded the sermon not as an end in itself but as the means to a higher end, he spared no effort to clothe it in a form befitting its dignity and purpose. Structurally, his sermons follow faithfully the best models of the Jewish pulpit in Italy. The נפוצות יהודה seems to have influenced him profoundly in his method of preaching. Like Moscato, Figo adheres closely to Cicero's outline of an oratorical composition, consisting of four parts: the exordium, the proposition, the analysis, and the conclusion, all of which revolve around a Biblical text, נושא,

[18] P. II, Ser. 66, p. 40d.

[19] P. I, Ser. 10, p. 15b.

and a Rabbinic text, מאמר. Unlike the נפ"י, the בל"ע indicates only the occasions on which the respective sermons were preached; it gives no titles and no summaries of the propositions and divisions. These minor deviations in the external form of the latter volume, however, inasmuch as the inner structure is substantially the same in both, may have been due either to the posthumous character of the work, or to the natural reluctance of its author to follow too closely the literary form of another craftsman.[20] Yet, though similar in structure, the sermons of these volumes differ greatly in style and content. Moscato laid much emphasis on beauty of expression; Figo strove for clearness and simplicity. Moscato seized upon ideas that sparkled in their brilliancy; Figo rested content with familiar truths that needed but greater transparency and freshness to make them convincing and appealing. Moscato gathered material for his sermons from the flowers in the garden of the intellect, poetry and belles-lettres, as well as from its more robust plants, philosophy and history; Figo chose to weave his thoughts out of the more durable strands of the practical and the useful, physiology,[21] physical geography,[22] astronomy,[23] and similar popular sciences.[24] Moscato was inclined toward mysticism and fond of quoting from cabalistic writers; Figo steered clear of mysticism and apologized when referring to interpretations derived from cabalistic works.[25] Moscato, conversant with the lore and letters of the ancients, frequently resorted to foreign sources for information and inspiration; Figo, more limited in his knowledge of general literature, depended mostly on the Jewish sources of which he was master, and on the inventiveness of his own mind. Hence, while the former fascinates us with the variety of his themes and the versatility of his powers, the latter impresses us with the originality of his thought and the profundity of his feeling.

---

[20] Figo expresses a deep-seated abhorrence of the tendency only too common among authors to use inventions not their own. "My intimate friends know only too well that from early youth I have detested that low and degrading practice of wrapping in a toga not one's own, of glorifying myself with the labors of others"—גדולי תרומה, הקדמה, p. 4b.

[21] See P. I, Ser. 6, p. 9a; Ser. 8, p. 11b; Ser. 9, p. 14a; P. II, Ser. 69, p. 45b, Ser. 76, p. 51d, etc.

[22] P. I, Ser. 2, p. 2d; Ser. 24, p. 31d; P. II, Ser. 34, p. 1a; Ser. 46, p. 13a; etc.

[23] P. II, Ser. 18, p. 15b.

[24] P. I, Ser. 16, p. 24a.

[25] "Although it is not my custom to dabble in the mysterious whose depths I am unable to fathom, I yet refer to this mystic interpretation which, though found in the Zohar, occurs also in other authoritative writings"—P. II, Ser. 50, p. 19b.

Indeed the paucity of material from secular sources proved a help, rather than a hindrance, to the structural completeness of Figo's sermons. It facilitated a more deft grouping of the parts as well as a more thrifty management of the material at hand. Unencumbered with an overabundance of illustrative matter derived from general literature, whether of ancient or contemporaneous origin, the framework of his sermons exhibits a clearness of outline, an orderly arrangement of ideas in logical sequence, such as is often obscured and thrown into disorder by excessive elaboration and congestion. Simplicity and brevity—these are of the distinguishing characteristics of the בל״ע;[26] and these essential qualities of good preaching are more often vitiated than aided by the copious use of miscellaneous information.

Accordingly, in these sermons, nothing so impresses us as the simple plan underlying their faultless construction. From the exordium to the conclusion, the message of the preacher, in its gradual unfoldment, compels the attention and wins the reasoned assent of the reader. No words are wasted, no ingenious devices are employed, no superfluous examples are multiplied. The seemingly elaborate Haggadic support the main theme or any aspect of it receives, is calculated to fortify the reason with the evidences, so cogent and weighty, from authoritative sources. The thought is amplified and corroborated by the homily, never supplanted or interrupted by it. The preacher, good hunter that he is, has his gaze ever riveted on the game he means to bag, all the while he is furbishing his implements and making ready for the capture.

---

[26] When on occasion Figo feels constrained to expatiate at some length on a particularly significant aspect of his message, he craves the patience of his hearers for the resultant prolixity. "And now, my worthy hearers," he pleads, "bear with me, if I deviate from my customary conciseness of speech . . .," Ser. 23, p. 30d.

The approach to his sermon, his exordium, consists generally of a statement of the origin of the question; rarely does he open with the historical setting of the text.[27] His chief purpose in this initial undertaking is to prepare the mind to understand the truth of his message, to appreciate its importance, its timeliness, its practical worth. His exordium is always tributary to the proposition; it directs our attention to the central theme. At times this is accomplished in one succinct sentence, as when he opens a Passover sermon with the following direct statement: "Of the many mysterious symbols associated with the observance of the Feast of Passover, I choose to single out for special study and comment the use of the four cups of wine."[28] Occasionally, a brief reference to the conclusion of a preceding sermon in the same series, followed by a declaration of his purpose in the one presently to be given, seems to suffice.[29] More often, however, the preacher regards the general background of the proposed subject as the most suitable source from which to derive his exordium. A sermon on repentance, for instance, is introduced with the thought, carefully presented, that disease-breeding substances are expelled from the body either by natural means, as when the inherent strength of the constitution subdues the infectious elements and eliminates them through the pores of the skin, or by artificial means, as when bleeding is resorted to or some powerful drugs are administered. Now, repentance aims to rid the soul of its sickness, its sins. When it is motivated by love, the process is a natural one; when actuated by fear, it is an artificial one.[30] Or, in a sermon preached on Rosh Hashanah coincident with the Sabbath day, in which the proposition is advanced that the solemn admonition of the preacher, on such a day, when the blasts of the Shofar are unheard, may well be used to sound the call to repentance, the exordium develops the idea that man's intelligence enables him to devise substitutes for impaired or limited natural functions. Eye-glasses, for example, restore weak vision to normal strength, thus correcting a defect by substitution. The microscope, in magnifying objects too minute for

[27] Ser. 12, p. 19a.
[28] Ser. 26, p. 33a.
[29] P. II, Ser. 39, p. 5c.
[30] Ser. 8, p. 11b.

ordinary perception, serves a similar purpose. A feeble memory, we know, is often aided by sheer association of ideas. In like manner, in the realm of the spirit, certain religious forms and observances have the tendency to remind us of God's presence in the world, to make us visualize the great events of the hallowed past. When such practices are denied us, as when we are mute and incapable of raising our voice in prayer, our teachers have recommended fitting substitutes. The meditations of the heart, they say, will prove just as efficacious, in such cases, as the prayerful utterances of the lips. How, then, and by what means, when deprived of the use of the Shofar, shall the soul be stirred to repentance?[31] Or, to cite one more instance, the proposition that the righteous man is he who learns to know the nature of God as revealed in His dealings with nations and individuals, and who, after having ascertained the essential attributes of God, strives to conform his own life to the divine pattern, is introduced with the general thought that the perfection of any performance must be gauged by the extent to which the result achieved compares with or approaches the finest accomplishments of man in the self-same field. In the mechanical arts, it is the work of the expert craftsman that must be used as the standard of measurement. In the field of morals, the worth of a deed can be determined only when lifted in the serene light of the most august ethical conduct ever attained by man. And in the domain of the purely religious, nothing short of God's own ways and character can serve as the criterion of our judgment, nothing short of His divine attributes can measure the success or failure of our own lives.[32]

The body of the sermon aims to develop the proposition of which the exordium is the logical precursor. The texts, both Biblical and Rabbinic, usually suggest the number and content of the divisions, though not infrequently they serve only to confirm the reasonableness of the central thought, its natural ramifications and wider applications being supported by Biblical verses and Haggadic passages other than those with which the sermon is headed.[33] With Figo, whatever is germane to the subject, even when only slightly or remotely related to the text, finds its appropriate place in the fuller development of the sermon. The proposition, and not the text, defines the limits of the sermon and determines the extent and content of its divisions. It is to the steady employment of this method that Figo owes some of the most striking effects of his style: unity and continuity of thought, simplicity and conciseness of expression, variety of theme and completeness of treatment. And it is also to the employment of this method, enabling him, as it does, to swerve, when necessary, from his chosen text and marshal apt passages from other authoritative sources, which require only the art of the skilled interpreter to make them buttress the position of the preacher, that he owes his wide popularity as a great homiletical exegete. To this very day preachers of the old school are turning to the בל"ע not only for inspiration but also, and perhaps chiefly, for instruction in the art of homiletical interpretation, in which Figo still remains the undisputed master. His work is a veritable mine for the seeker after the precious ore of old-time Jewish preaching. Not a page but what abounds in unexpected flashes of brilliant exegesis. Not a sermon but what increases our admiration of his indubitable excellence as an adroit yet withal earnest and profound homiletical interpreter. Whether he undertakes to expound a difficult scriptural verse or to elucidate an enigmatic rabbinic passage, he brings to bear upon it all the acumen of the skilled dialectician and all the meticulous exactitude of the trained critic. The principles governing this species of exposition are, of course, unacceptable to the scholar; they are principles with which the Midrash has long made us familiar. But whatever the worth and validity of the method employed, for purposes of edification and spiritual stimulation such exposition has always proved more potent and effective than that of sound scientific criticism, with which the preacher is little concerned.

---

[31] Ser. 7, p. 10a.

[32] P. II, Ser. 34, p. 2a.

[33] P. I, Ser. 4, 9, 21; P. II, Ser. 34, 48, etc.

The secret of Figo's charm and influence as an homiletical exegete lies in the fact that his interpretations are simple and natural, and luminous with a deeper insight into the spirit of the text. In interpreting, for example, the familiar prayer: "Remember us unto life, O King, who delightest in life, and inscribe us in the book of life, for thine own sake, O living God," he observes that the final phrase למענך אלהים חיים holds the key to the true meaning of the entire passage. We ask for length of days not that we might enjoy for a longer period the physical pleasures of the earth but rather that we might be given more time in which to put forth our energy in behalf of God's holy causes.[34] The reason why God had no respect to Cain's offering is clearly indicated in the opening phrase of the Biblical account: "And in the process of time it came to pass that Cain brought of the fruit of the ground an offering unto the Lord."[35] An offering to be acceptable unto God must be of the very first fruits of a man's effort; but Cain consecrated unto God the results of his labors only מקץ הימים, after many days had passed.[36] Pharaoh's pronouncement, after Joseph had interpreted his dreams, that 'Forasmuch as God hath shown thee all this, there is none so discreet and wise as thou,"[37] was more just than hyperbolical. Divine inspiration comes to a man in exact proportion to his own natural resources. A man possessed of much wisdom will, with the aid of God, acquire more. Hence the correctness of Pharaoh's statement, that, since God has made all this known to Joseph, he must have been endowed with great understanding to begin with.[38] Isaiah's prophecy that in the days to come "the earth shall be full of the knowledge of the Lord, as the waters cover the sea,"[39] contains a profounder truth than the superficial levellers of society pretend to find in it. The simile "as the waters cover the sea" is of prime significance here. The surface of the sea, though smooth and seemingly even, covers depths of varying degrees. Similarly, the knowledge of God will fill more abundantly the lower levels, the humbler hearts, the deeper spirits. For the lower the bottom of a vessel the more ample its capacity for freightage.[40]

As a rule, the original turn he gives to a Biblical word or phrase, which enables him to delve deeper into the inner content of the verse, is conditioned by some linguistic difficulty the commonly accepted interpretation seems to present. In commenting on the

[34] Ser. 13, p. 20c.
[35] Gen. 4.3.
[36] Ser. 4, p. 6a.
[37] Gen. 41.39.
[38] P. II, Ser. 55, p. 24a.
[39] Is. 11.9.
[40] P. II, Ser. 38, p. 5a.

verse: הנני נשפט אותך על אמרך לא חטאתי,[41] he raises the question why if it means to convey the sense that God will judge Israel for denying his guilt, נשפט rather than שופט is used here. Nor is it necessary to make the *niph'al* expressive of mutual action when the force of the passive has its rightful place here. For when one asserts his innocence, despite his affliction, he means to imply that the punishment he is made to suffer by God is totally undeserved. In this way he brings it about that God's justice will be questioned. Hence the divine rebuke: If you profess innocence, then in the eyes of the world, not only you, but even I, will stand in judgment.[42] A somewhat similar difficulty confronts us in the verse: שתולים בבית ה׳ בחצרות אלהינו יפריחו.[43] The customary rendition: Planted in the house of the Lord, they shall flourish in the courts of our God, calls for the *qal*, יפרחו, rather than the *hiph'il*. But here, too, the deeper meaning of the verse justifies its present form. The Psalmist endeavors to assign a reason and a motive for man's existence in this terrestrial world. The souls of the righteous, in God's wisdom, have been transplanted from their original heavenly abode because while there (בבית יהוה), they were only planted (שתולים), receiving their own spiritual nourishment, but since they have been placed in this nether world (בחצרות אלהינו), they have been blessed with the privilege of serving others besides themselves (יפריחו), to cause others to grow and blossom.[44] In like manner, the verse: בכל עת אהב הרע ואח לצרה יולד. "A friend loveth at all times, and a brother is born for adversity,"[45] contains as regards its syntactical form an imperfect parallelism; either the participle or the imperfect should be used in both parts. The change in tense must indicate a change in thought, presenting us with contrasting rather than parallel ideas. Hence the true meaning of the verse must be: A friend loveth at all times (in joy and in sorrow), but a brother who loveth in adversity, יולד, is yet to be born.[46] Again the customary rendering of the verse: בישישים חכמה ואורך ימים תבונה,[47] as meaning: With the aged there is wisdom, and in

[41] Jer. 2.35.
[42] P. II, Ser. 52, p. 20c.
[43] Ps. 92.14.
[44] P. II, Ser. 41, p. 7b.
[45] Prov. 17.17.
[46] P. II, Ser. 57, p. 26b.
[47] Job 12.12.

length of days understanding, derives little support from the words as they stand. בישישים should be paralleled by ובאורך ימים. Obviously something other than a parallelism is contemplated here. As a matter of fact, what the author wishes to stress in this verse is none other than the familiar thought, that the persistence of a good, its durability, rather than its intrinsic worth, lifts it to the height of supreme excellence. Thus wisdom is with the aged, and ואורך ימים, if that wisdom endures, it rises to the height of understanding.[48]

In all instances, whether the difficulty that impels the searching analysis of the preacher be stylistic or theological in character, every word or phrase susceptible of special elucidation receives the closest scrutiny, that the deeper meaning of the text may thus be laid bare. The following passage, for example, which seems to abound in syntactical deficiencies, assumes a more compact and artistic form once its subtler sense becomes evident. ויהי בימים ההם ויגדל משה ויצא אל אחיו וירא בסבלתם וירא איש מצרי מכה איש עברי מאחיו: ויפן כה וכה וירא כי אין איש ויך את המצרי...[49] "And it came to pass in those days, when Moses was grown up, that he went out unto his brethern, and looked on their burdens; and he saw an Egyptian smiting a Hebrew, one of his brethern. And he looked this way and that way, and when he saw that there was no man, he smote the Egyptian . . ." The passage, as translated, contains some superfluous words and letters. The ב in בסבלתם could well be omitted. The word מאחיו seems to serve no necessary purpose. The repetition of וירא in the first sentence could hardly be defended on stylistic grounds. The customary rendition, therefore, taking no cognizance of these evident redundancies, is altogether inadequate and hence untenable. The real thought expressed here, simple though it be, reveals a finer grasp of the niceties of the situation even as it evidences greater precision in language. Moses going forth among his brethern, fell to pondering over their bitter lot (וירא בסבלתם), wondering why God saw fit to subject them to such grievous trials and hardships. But suddenly he was made to witness an incident that furnished a solution to this baffling mystery. An Egyptian smote a Hebrew while in the midst and in the very sight of his brethren (מאחיו). But none took his part. None was man enough to rush to the defence of his brother (וירא כי אין איש). It was then that the real cause of their servitude and helplessness was clearly revealed to the future emancipator.[50] In like manner, the following verse, faulty in style, appears without a flaw, when the interpreter's art is skillfully applied to it. ויאמר שאול לנערו והנה נלך ומה נביא לאיש כי הלחם אזל מכלינו ותשורה אין להביא לאיש האלהים מה אתנו,[51] "Then said Saul to his servant: 'But, behold, if we go, what shall we bring the man? for the bread is spent in our vessels, and there is not a present to bring to the man of God; what have we?'" The seer is first referred to as איש, and then as איש האלהים. Why this misleading variation? Then, too, the final query מה אתנו, in view of what precedes it, is unnecessary and repetitious. To surmount these difficulties, we need but penetrate more deeply into the thought of the text. The value and appropriateness of a gift can be guaged in one of three ways: the gift itself, because of its intrinsic worth, may be treasured; the donor may be a celebrated person, in which case the thing of smallest value may be highly prized; the recipient may be of low estate in which case anything, however little its value, will suffice to evoke appreciation. Now Saul, in interposing his objection to the servant's suggestion, that they go to inquire of the man of God, seeks to demonstrate its utter impracticability. If we go, he says, what thing of value have we to give even to an ordinary man (לאיש) not to speak of a gift such as will be appropriate for this man of God (לאיש האלהים). Of course, any token coming from men of high station will be received with much gratitude; but what have we to recommend us (מה אתנו)? The servant acquiesces in the argument advanced, but ventures to introduce a new element apparently overlooked by his master. I will present the man of God, he counters the objection raised, with something of my own possession, and from a mere servant any trifle will prove acceptable.[52]

---

[48] P. II, Ser. 50, p. 18a.

[49] Ex. 2.11–12.

At times, it is not the language of the text but the thought expressed therein that offers the greatest difficulty, as when the

[50] Ser. 25, p. 32c.

[51] 1 Sam. 9.7.

[52] P. II, Ser. 51, p. 19a.

theological implication of the verse seems out of harmony with the accepted norms of Jewish thought, or when the ideas are self-contradictory, platitudinous, or nebulous. In all such cases, the thought itself must be probed, dissected, and illuminated before it can be brought into complete harmony with Jewish ideas or with the ways of clear and logical reasoning. Take for example, the verse in Genesis: ויאמר יהוה אלהים הן האדם היה כאחד ממנו לדעת טוב ורע ועתה פן ישלח ידו ולקח גם מעץ החיים ואכל וחי לעולם,[53] "And the Lord said: 'Behold, the man is become as one of us, to know good and evil; and now, lest he put forth his hand and take also of the tree of life and eat and live forever.'" It would appear from this statement that God was loth to have man possess the knowledge of good and evil. Yet, without such knowledge, how could man rise superior to brute creation? A more minute analysis of the underlying thought of the text, however, will disclose a deeper insight into the character of God and the destiny of man. What enriches our lives and brings us perfect joy comes not from the things we receive from others but from those things we ourselves, by strenuous personal effort, acquire. Man, to be sure, might attain unto the knowledge of good and evil by mere accident; he might eat of the fruit of the tree of knowledge. But then his nature would simply undergo a sudden transformation. He would thus be turned into a being who is naturally endowed with such knowledge. The joy of personal achievement would not be his. The same holds true of the eternal life. Now, God, who is ever concerned about the happiness of his children, chooses to have man come into the possession of the precious gifts of the spirit by a life of perfect obedience and harmony, that through aspiration and struggle his soul may be refined and ennobled and merit the life eternal.[54] Or, to give an instance of a text in which the thought seems self-contradictory, take the verse: זבחי אלהים רוח נשברה לב נשבר ונדכה אלהים לא תבזה,[55] "The sacrifices of God are a broken spirit; a broken and a contrite heart, O God, Thou wilt not despise." In the first part of the verse, the thought stressed is that the broken spirit excels ritual sacrifices; in the second part we are informed that it is not despised by God, but evidently not rated very high. To remove the apparent contradiction, it is necessary to remember that lowliness of spirit may be produced by crushing external circumstances as well as by inner spiritual experiences. The Psalmist draws a clear-cut distinction between the two. When the broken spirit is the result of a deep-seated humility, which comes from the recognition of God's greatness and man's insignificance, it surpasses anything of a ritual character. But even when the humility is born of external causes, such as physical suffering and sorrow and loss (נדכה), though inferior in kind because baser in origin, it is not altogether despised by God.[56] Again, as an example of what appears self-evident and commonplace in thought, take the verse: ולך אדני החסד כי אתה תשלם לאיש כמעשהו,[57] "Also unto Thee, O Lord, belongeth mercy; for Thou renderest to every man according to his work." Nothing surely could be more gratuitous than for the Psalmist to repeat here the well-worn truth that God rewards a man in accordance with his good deeds. Besides, such dealing with man could hardly be characterized by the quality of mercy; common justice dictates such treatment. The thought must of necessity be fresher and sounder than that, to conform to the high literary standard of the author in question. In reality, what we regard as central in the statement of the Psalmist should be construed as merely incidental. The idea set forth in this verse is that only God is capable of performing an act of pure mercy. Man, as in the case of providing decent burial for the dead, for instance, from whom no direct reward can be expected, may rise to a high level of disinterested kindness, but his motive, even in such a case, may not be entirely unmixed, inasmuch as God renders to every man according to his work; the expectation of divine compensation may tarnish the brightness of the purest of his motives.[58] And, finally, to cite an example of the text that is obscure in thought, take the verse: אני שלום וכי אדבר המה למלחמה,[59] "I am all peace; but when I speak they are for war." Aside from the fact that the first letter, if the parallel is to be exact, should be deleted from למלחמה, the extreme vagueness of the clause

---

[53] Gen. 3.22.
[54] Ser. 15, p. 23a.
[55] Ps. 51.19.

---

[56] Ser. 13, p. 21c. [57] Ps. 62.13.

[58] P. II, Ser. 70, p. 46a. [59] Ps. 120.7.

"but when I speak" pointing to no definite utterance that might even be implied, is mystifying, to say the least. It certainly marks a deviation from the customary lucidity of the Psalmist's expression. But the thought of the writer is as clear as it is profound. As regards peace, men fall into two distinct classes: there are those who speak peace with their lips but conceal a seething volcano of hate within; and there are those who are pugnacious in manner, speak contentiously, but are quite peaceful within. Hence, the significance of the Psalmist's pronouncement. God says: I am all peace, also when I speak: My inner being and its outer expressions are altogether harmonious. But they, the wicked, (even when they speak peace), it is למלחמה, to disarm the opponent so as to wage war against him all the more successfully.[60]

And the same method of homiletical interpretation Figo employs in the exposition of the rabbinic text. His exegesis of Haggadic passages bears the same striking characteristics. It is simple, natural, thorough, and penetrating, always bringing to light a truth not readily discernible. The Mishnaic statement,[61] for example, which reads: כל ישראל יש להם חלק לעולם הבא שנאמר ועמך כלם צדיקים לעולם יירשו ארץ,[62] "All Israel have a portion in the world to come, as it is said: 'And thy people shall be all righteous; they shall inherit the land,'" presents a number of textual difficulties. In the first place, the phrase "all Israel" would seem to imply that there are no sinners among them who are unworthy of a portion in the world to come, an assumption contrary to fact. Moreover, the very Biblical verse adduced in support of the declaration makes the inheritance of the land conditional upon a life of righteousness, thus apparently excluding all those who fail to qualify in this manner. In the second place, the idea of "a portion in the world to come" would be conveyed more correctly by חלק בעולם instead of לעולם. In the third place, dealing as the statement does with something yet to be, the future rather than the present should be denoted by the verb employed, using יהיה להם in place of יש להם. However, the simple fact is that this pithy saying of the rabbis contains a much more profound and significant thought than the current interpretation permits us to see. Indeed, the wide gap that exists between the outlook of our Jewish teachers and the philosophy of non-Jewish thinkers is nowhere else so graphically indicated. The latter assert that the chief end of man's life on earth is the perfection of his mind, his reason. To them, therefore, the ascetic, who secludes himself in solitude, in pursuance of this end, lives an exemplary life. Judaism denies the validity of such a philosophy. It insists that nothing which cannot be achieved by all men may properly be viewed as an ultimate end. Human perfection, to be universal, must flow not from the reason but from the will, not from the development of the rational faculties but from the cultivation of a sense of obedience. Hence, Judaism stresses righteousness, the living of the prescribed life, or the will to live it, which is within the reach of all men, rather than the perfection of the intellect, which is open only to the gifted few. This is the truth expressed in the text before us. כל ישראל יש להם חלק—all Israel have a definite task to perform in life, by which, as if by a ladder, they can mount לעולם הבא, to a state of spiritual perfection.[63]

---

[60] P. II, Ser. 78, p. 55b.

[61] San. 90a.

[62] Is. 60.21.

Whatever the rabbinic utterance the preacher introduces in the course of his sermon to illustrate and strengthen his main thesis, it is its profounder meaning, its spiritual significance, that excites his interest and challenges his powers. In the statement ascribed to Simon ben Jochai, that הככר והמקל נתנו מכורכין מן השמים,[64] "the loaf and the staff (rod) wrapped together came down from heaven," he finds the emphatic, albeit poetic, expression of the Jewish position that good and evil proceed from the same source, and do not, as is erroneously claimed by certain philosophers, represent two different powers or principles. The loaf that sustains life, and the rod, often employed to reduce vitality, are wrapped together, emanate from the same principle—good and evil alike come from God.[65] The dictum of R. Ammi that אין תפלתו של אדם נשמעת אלא אם כן משים נפשו בכפו,[66] "A man's prayer is not heard unless he puts his soul in his hand," conveys to Figo not so much the thought of concentration in prayer, important though it be, as the more fundamental idea of spiritual self-possession in all the manifold relations of life. Not until a man has become the absolute master of the warring forces within him, not until he has placed his נפש, his passionate nature, under perfect control, will his prayers prove acceptable to God.[67] Rab's lofty conception of the nature of the joys reserved for the righteous in the world to come, when צדיקים יושבים ועטרותיהם בראשיהם ונהנין מזיו השכינה,[68] "the righteous shall be seated with crowns on their heads, sustained by the glory of the Shekinah," yields to Figo a thought of added spiritual significance. The crown of the righteous, we note from the text, rests not על ראשיהם, on their heads, but בראשיהם, in their heads. It is the depth of their understanding, the nobility of their thought, the keenness of their vision, the purity of their speech, that constitute the royal crown of the righteous.[69] And how luminous is his interpretation of that rabbinic passage in which Moses' vision of God is characterized as one that came to him through אספקלריא מצוחצחת, a polished glass, while that of the other prophets as one transmitted through אספקלריא מלוכלכת, a dim glass![70] The adjectives, says Figo, do not, as they are popularly understood, qualify the degree of visibility but differentiate between two distinct mediums. There is the ordinary glass that may be described as מצוחצחת since both sides are clear, and there is the looking-glass that may well be designated as מלוכלכת since one side is stained with quick-silver. Herein lies the difference between the vision of God as vouchsafed to Moses and that revealed to the other prophets. Moses saw God himself, as if through a window pane; the other prophets saw only His image, as reflected in a mirror.[71]

---

[63] P. II, Ser. 36, p. 3b.

[64] Lev. R. 35.6.

[65] Ser. 29, p. 36b.

[66] Ta'an. 8a.

From some of the examples cited above, it must have become evident that in Figo, as in almost all of his contemporaries, the tendency to interpret Biblical verses and rabbinic passages symbolically was rather strong. And, indeed, the symbolic method of interpretation, long the fashion among Jewish preachers, could not but possess a peculiar fascination for a mind ever on the alert to discover the deeper meaning, the more striking application, lurking in a given text. Thus, in the verse: "By night on my bed I sought him whom my soul loveth; I sought him, but I found him not,"[72] night is made to represent the terrestrial world, and the beloved sought, the First Cause. But He cannot be found in the external world; nor in the "broad ways," the upper realms, the revolving spheres. Not even the "watchmen," our faculties of mind and heart, can have any true knowledge of Him. It is only in the process of living, through personal experience, that we discover Him.[73] Thus, R. Eliezar's statement that the night is divided into three distinct watches, each of which is signalized by some characteristic natural phenomenon,[74] typifies the three different states of darkness in human life. There is the darkness of ignorance, when the "ass brays;" there is the darkness of persecution, when the "dogs bark;" and there is the darkness of death, when the "infant suckles at its mother's breast," when man, the child of dust, returns to the bosom of mother earth.[75] Thus, too, the Ark symbolizes the accessibility of the Torah to the average human intelligence; the Cherubim denote the Written Law and the Oral Law; the Table speaks of the ample provision in the Torah for all our spiritual needs; the seven-branched Menorah indicates that the seven sciences are fully incorporated in the Torah; the Altars point to the need of overcoming, of consuming as by fire, the material desires and ambitions which are the most formidable obstacles to the proper fulfilment of the Torah; the Laver represents the power of the Torah to cleanse and purify the mind so as to enable it to become a fit abode for divine truth.[76] But, despite his native predisposition for such interpretation, Figo exercises much moderation and self-restraint in its use, resorting to it only when the simpler, more literal, though equally homiletical, interpretation fails to adjust satisfactorily the textual difficulties or to impart in adequate measure an insight into the spirit of the text. In the main, viewing his homiletical work as a whole, we may say that the repeated professions of his fondness for the פשט, which he feels constrained to make whenever some exigency demands a deviation from his usual style and method,[77] are more genuine, because attested to by actual practice, than the expressions of a similar character we meet with so frequently in the works of our early preachers.

---

[67] P. II, Ser. 63, p. 35b.

[68] Ber. 17a.

[69] P. II, Ser. 18, p. 16a.

[70] Lev. R. 1.14.

[71] P. II, Ser. 44, p. 11a.

---

[72] Cant. 3.1.

[73] Ser. 28, p. 35a.

[74] Ber. 3a.

[75] Ser. 18, p. 25d.

[76] P. II, Ser. 45, p. 12c.

It was this mastery in the art of homiletical exegesis that enabled him to draw the great bulk of his illustrative material from purely Jewish sources. Scriptural verses and Haggadic passages, aptly chosen and skilfully interpreted, very often served to confirm the truth of his message, to demonstrate the cogency of his reasoning. At times, too, the works of such Medieval thinkers and commentators as Maimonides, Naḥmanides, Baḥya, Abravanel, and others,[78] furnished him with many an analogous idea or a fresh point of view. Not infrequently, however, he derived his illustrations from the popular sciences, especially medicine, and from the simple facts and phenomena of nature. Sin, for example, he finds to bear striking resemblance to bodily ailment. What sickness is to the body, sin is to the soul. We know that as long as the normal heat of the body receives no increment from any external source, the preservation of one's health is a comparatively easy matter. It is only when some foreign substance enters the blood, which raises its temperature, that sickness ensues. Similarly, the spiritual part of man, when in a state of normality, is naturally dowered with a mysterious but none the less real power that impels it to heed the wiser admonitions of a saner judgment, to live in perfect obedience to the divine behests. But when some foreign heat, such as emanates from violent passion or mental aberration, gains entrance into the soul, overpowering the natural fervor for spiritual integrity and harmony, then sickness, enervating and ravaging sickness, prostrates the soul.[79] Again, the preacher is the physician of the spirit. He who would undertake to prescribe a remedy for some physical malady must first make a thorough diagnosis of the case. He must carefully observe the symptoms, must endeavor to locate the source of the trouble, must determine the extent to which the disease has taken root in the constitution of the patient and the probable duration of its course, before he can hope to prescribe the medicine that may effect a speedy and complete cure. Now, the preacher, when confronted by so much spiritual sickness, dare not do less for his patients.[80] Or, to illustrate the thought that it is God's will that we dedicate our possessions to His service, and that the more of our knowledge or financial means we dispense to those in need of it the more will our own stores increase, he cites as perfect analogy the mother who gives suck to her babe. The milk in the mother's breast will increase with the demand made by her offspring. The more she gives, the more she has to give.[81] Again, the love of freedom is deeply rooted in our nature. Nothing so irks us as subjection, and nothing so elates us as liberty. All animate creation shares this instinct. Do not birds sing their most joyous songs when free to soar heavenward? And do they not moan pitifully when held captive in a cage?[82] Or, to disclose the true forcefulness of the divine utterance: "I remember for thee the affection of thy youth, the love of thine espousals; how thou wentest after me in the wilderness, in a land that was not sown,"[83] he dwells on the difference in attitude between the bride and the long espoused wife. The latter will cheerfully accompany her husband in his sundry migrations, heedless of the discomforts and hardships which these may entail. Not so the recent bride. The joy of life still courses in her veins. She craves unalloyed pleasure, song, luxury, exhilaration. When she goes forth with her beloved, it is to stroll in the parks and gardens of the city. Israel, however, when yet only a bride, manifested the spirit of the long tried and devoted spouse.[84] Again, speaking of the grave responsibility resting upon us as human beings to guard our tongues from evil, he conjures up a picture of an impoverished member of the nobility who yet stands in great favor with the king. In fact, the king esteems him so highly as to wish to honor him above all other courtiers. And so he invests him with a richly-ornamented sword, to be worn by no one but himself, and to be unsheathed only in the king's service. In the course of time, however, this favorite of the king becomes so ungrateful as to venture to lift this very sword against the king. How contemptible such an act must appear in the eyes of all men, and how difficult it is to devise a punishment that would fit such a crime! Is not the tongue the badge of man's chief distinction in the world, granted to him by God as a token of His love; and for man to use it for aught else but for His honor and glory, is it not to be ungrateful for the blessed privilege bestowed on him?[85]

---

[77] "Although it is not my practice to search for mysterious and symbolic ideas underlying the plain meaning of Biblical texts, yet, in this case, I fear that a slight deviation from the simpler method of interpretation is unavoidable"—Ser. 3, p. 4d.

[78] See Sermons 27, 31, 43, 60, 61, 66.

[79] P. II, Ser. 69, p. 45b.

---

[80] Ser. 10, p. 14b.

[81] Ser. 4, p. 6c.

[82] P. II, Ser. 46, p. 13a.

[83] Jer. 2.2.

[84] P. II, Ser. 57, p. 26c.

In the Conclusion, the usual method Figo employs is to recapitulate the main ideas of the sermon in such a manner as to indicate the relation they bear to the Biblical text. At times, he terminates the discourse with a brief but fervent prayer.[86] More often, the appeal which ordinarily runs through the body of the sermon as a continuous application, is placed at the very end, thus marking the conclusion as well as the culmination of the message. In most instances, the appeal is compact in form, direct and simple in manner, and hopeful in tone. "And now, my brothers and friends," he opens one of his characteristic appeals, "look unto Abraham your father and be like him. Rise up to meet the needs of your time. Those of you who are learned should teach others; the strong should come to the rescue of the weak; the rich should use their means to relieve the destitution and distress of the poor."[87] "Come, then, friends," he phrases his appeal on another occasion, "let us feel ashamed of our conduct and return to God who will surely heal us. Let us resolve to abandon all dishonest dealings, and to return to the rightful owner what we have dishonestly acquired."[88] "And now, young men," to cite one more example, "let me say this to each one of you: Direct your attention to the selection of a course of conduct that will crown your life with happiness. Dedicate your youth to higher purposes, and your latter days will be exalted.

---

[85] P. II, Ser. 68, p. 43c.

[86] Ser. 68, p. 43c.

[87] P. II, Ser. 41, p. 8b.

[88] Ser. 10, p. 16b.

May you, together with all Israel, be inscribed unto life. Our strength we derive from God, we who have clung to Him from the early days of our youth."[89]

III

While preachers, generally speaking, seldom originate new ideas or found new systems of thought, no true preacher who registers in his sermons an authentic reaction to the life and thought, the motives and experiences, of a given generation, can fail to embody in his work a definite and systematic philosophy of life. What he believes and thinks and feels, as well as what he wishes to see accomplished, of which the sermons are clear records, form, in their totality, when properly organized, a distinct and complete outlook upon the world and man's place and function in it.

This is especially true of a preacher like Azariah Figo, who, though master of the homily in its literary and inspirational aspects, never rested content with the excellence of his own performance or ever lost sight of the fact that conviction must precede moral conduct, and intellectual assent pious counsel. For much as he valued sound homiletical principle and the fervid, effective exhortation, he eagerly sought to implant in his followers the habit of thought, that they might be grounded in doctrines which reason could not overthrow and espouse ideals of which sober judgment could not but approve. He aimed to instruct as well as to admonish, to enlighten as well as to edify. In his sermons, we shall therefore find a consistent, if not a continuous, exposition of what he believes Judaism to be and what demands it makes of its adherents; what the spiritual ideals of Israel seek to accomplish in the world and what part the Jew is to play in the weaving of life's newer pattern.

To Figo, as to all the great leaders in Jewish thought, the belief in the existence of the one God and the supremacy of His will, is central in the teachings of Judaism and indispensable to any comprehensive view of man's life and destiny on earth. This is the foundation on which Judaism has built its vast superstructure, and this constitutes its chief distinction among the religions of the world. Christianity, in proclaiming the man-God, vitiates the purity of the God idea. Mohammedanism, while professing a belief in the unity of God, exalts its false prophet to an absurd degree, and thus discredits the sanity of its doctrines.[90] Judaism alone affirms the absolute oneness of God and stresses the spiritual nature of His being and the sovereign power of His will. Natural phenomena, the fixed laws of nature, do not invalidate the belief in individual Providence. God rules by natural law, to be sure, but He will reverse the natural order whenever His justice demands such an alteration. The pagan nations, led astray by philosophical theories, may repeat the assertion that, having created the world and established its laws of operation, God lets it run its course without change or interference. But Judaism insists that God has not abandoned the world to the mercy of mechanical forces, that He ceaselessly exercises His power over it, guiding and controlling it and, when necessary, changing it.[91] Not even the will of God is fixed and unchanging. Let infidels deny the efficacy of prayer, the potency of repentance, blinded as they are by the false assumption that God's will is adamantine and unyielding. We cling to the faith that ours is not a capricious God, that He wills only what is reasonable and just, and that in His dealings with man His will is largely determined by man's conduct. The function of prayer and repentance, therefore, is not to change God's will but our own disposition. We mean to change our conduct, upheld by the assurance that no arbitrary spirit will dominate His judgments.[92]

---

[89] Ser. 4, p. 7a.

God is ever present and active in the world. When fire consumes our homes, when young men fall by the sword, when thunder storms work havoc in our midst, it boots us little to ascribe these tragic occurrences to the cruel accidents of nature. We act more wisely and in greater harmony with truth and reality when we view these extraordinary disturbances as the clear manifestations of divine displeasure and proceed to repent of our sins and make amends for the wrongs we have inflicted on others.[93] Natural philosophy busies itself with effects, endeavoring to trace them back to a variety of causes; Judaism begins with the primary cause, God, and refers all effects to His will.[94] Hence, proper conduct, which is advocated by non-Jewish thinkers as well, will not by itself produce perfection of spirit, unless it be the expression of a ready submission to the will of God, unless, in so acting, we subject our wills to God's will and do not merely follow the promptings of our own reason.[95] We pray with the Psalmist: "Teach me to do Thy will, for Thou art my God,"[96] and for no other reason whatsoever.[97] And when we refrain from evil it is not because our own wisdom dictates such conduct but because God abhors evil and we cannot but do His bidding. Even as the obedient and docile patient, we take the medicine prescribed for us by the great Physician, undisturbed as to whether we can assign a reason for such prescription or not.[98] Ours the duty to live the religious life, in all things, in matters that appeal to the understanding as well as in things that baffle it, out of a pure sense of submission to the will of God.[99]

---

[90] Ser. 26, p. 33b; P. II, Ser. 55, p. 24c.

[91] Ser. 3, p. 5a.

[92] *Ibid.*, p. 5b.

[93] Ser. 12, p. 20b.

But what is God's will? How shall we learn to know it? We believe that God who brought the world into being without an effort made His voice heard to our fathers when they stood at Sinai and on other memorable occasions. The revelation from Sinai, witnessed by our forbears and attended by many a wondrous manifestation, established the Torah on a sure and lasting foundation. Doctrines that have their origin in human reason are always in danger of collapse, for the reason is weak and uncertain. Experience alone can buttress truth permanently.[100] And the interpretation of the truths so revealed was not left to the puny mind of man; it was conveyed by God himself to the physical senses, the sense of sight and the sense of hearing. Hence, the traditions transmitted to us we can trace back to God.[101] We have but one Torah; the written law and the oral law are equally important and sacred because equally divine in origin.[102] Both enunciate, clearly and imperiously, the will of God.

[94] Ser. 16, pp. 23d–24a.

[95] P. II, Ser. 77, p. 54a.

[96] Ps. 143.10.

[97] P. II, Ser. 72, p. 48b.

[98] P. II, Ser. 77, p. 54a.

[99] P. II, Ser. 39, p. 5d.

[100] P. II, Ser. 45, p. 11b.

[101] *Ibid.*

[102] P. II, Ser. 38, p. 5b.

To act in conformity with the teachings of the Torah is to make the will of God supreme in our lives.

Judaism thus rests on the Torah, the direct revelation of God's will to man. This Torah, dealing with all the things that pertain to man's spiritual life on earth, is all-comprehensive, self-evident, and self-sufficient. The student of the Torah need not resort to other sources of knowledge, either for a fuller understanding of the revealed truth or for a fresh accession of necessary facts.[103] Frankly, we have no interest in theoretical science; we can dispense with Euclid's Geometry and Ptolemy's Almagest. Our sole interest is in the things of the spirit.[104] To be able to comprehend spiritual facts, no preliminary, extraneous studies are required. To be sure, the student of medicine must acquire a knowledge of natural philosophy, which in turn must be preceded by a mastery of the rules of logic. But the Torah needs no outside help, no background of proficiency in the rudiments of foreign branches of knowledge. Spiritual truth is accessible to all men.[105]

Is there no room for reason in religion? Of course, there is. In fact, Judaism imposes on us the obligation to search for the evidences of God's existence, confident that by seeking we shall find Him. Only the wicked would ban free investigation.[106] The truly religious man will never be satisfied with the proofs at hand. He will reach out for new disclosures of His presence; and in this perpetual search he will find his highest and purest happiness.[107] But, as regards the fulfilment of God's will, the faithful observance of His laws must precede any rational investigation; practice must pave the way for intelligent research.[108] We do not share the conviction, put forth by the wise men of other nations, that happiness and perfection depend on right opinions and correct attitudes. We may err in our judgments, and we may be unjust in our attitudes, our own impressions to the contrary nowithstanding.[109] Nor will we permit ourselves to be led astray by the fallacious doctrine that it is not the method but the motive, not the deed but the intention, that really counts. This has ever been the cry of the spiritually indolent. We know that unless we translate our fine intentions into sturdy deeds, the pious wishes and unexpressed yearnings of our hearts soon evaporate and disappear.[110] There is only one way of aspiring to God, and that is by doing His will. Knowledge cannot be substituted for action; and to know God's ways without obeying His divine commands, will open no avenue of approach for God to reach us.[111] If it be true that the ordinances of the Torah are too numerous, placing a burden on the average man almost too heavy to bear, it is equally true that we are not obligated to perform all of them with meticulous care when difficulties and obstacles intervene. To observe even but one of the many injunctions of the Torah with immaculate exactitude is to attain to a high degree of righteousness.[112]

---

[103] P. II, Ser. 45, p. 12b.

[104] P. II, Ser. 48, p. 15b.

[105] P. II, Ser. 45, p. 12a.

[106] P. II, Ser. 47, p. 14a—על מה נאץ רשע אלהים אמר בלבו לא תדרש—Ps. 10.13.

[107] P. II, Ser. 48, p. 16d—ישמח לב מבקשי יהוה—Ps. 105.3.

[108] P. II, Ser. 47, p. 14c.

[109] P. II, Ser. 57, p. 27b.

Belief may be arrived at by the efforts of reason; the commands of revealed legislation must be carried out even when not supported by reason. In matters of faith, our reason should determine our adherence; in matters of practical conduct, implicit obedience should be the rule.[113] The Torah rests on three mighty pillars: Reason, Revelation, Experience. It testifies to God's providence in three ways: by revelation, by experience, by reason. To possess perfect understanding, we must utilize and strengthen all three.[114]

The chief superiority of Israel over the nations of the earth lies just in this: that he was found worthy to be the recipient of the divine law of life.[115] The chief source of Israel's strength lies just in this: that he has learned to look for help not to nature but to nature's God.[116] Hence, unlike the other nations who, when they swerve from the right path, receive punishment only on account of the evil nature of the act, their own character and condition playing no part in the judgment, when Israel commits a transgression, it is not the sinful act alone, but the quality of the agent as well, that clamors for retribution. Being what he is, privileged as he has been, he must be held to greater accountability.[117] The Jew, therefore, who spurns any one part of God's law because his reason fails to approve its validity, wilfully excludes himself from the larger body of Israel, which is held together by the power of traditional law.[118] Our confession of faith: Hear, O Israel, the Lord our God, the Lord is One, epitomizes for us the whole range of Jewish belief and Jewish obligation. "Hear, O Israel," proclaims our acceptance of God's law and the recognition of our duty to hearken to His commandments; "the Lord our God," affirms our faith in individual providence; "the Lord is One," reiterates our belief in the absolute oneness of God. Thus, Torah, Providence, Unity constitute the substance of our faith and the goal of our strivings.[119] And, indeed, the integrity and spiritual happiness of Israel must ever depend on the open recognition that no experience is the accidental outcome of nature but the deliberate act of an ever watchful Providence. As long as this conviction is deeply rooted in Israel's heart, he will prosper in all his undertakings. When he falters in this his fundamental belief, and chooses to attribute to nature what rests only with God, he will be caught in the snare of the dangerous doctrine of determinism, from which there can be no escape and in which happiness never dwells.[120]

---

[110] P. II, Ser. 42, p. 8b.
[111] Ser. 5, p. 7d.
[112] P. II, Ser. 39, p. 5c.
[113] P. II, Ser. 47, p. 14c.
[114] *Ibid.*, p. 14a–b.
[115] Ser. 26, p. 33c.
[116] Ser. 16, p. 24a.

Israel has preserved and offers the world today a conception of spiritual culture which for its democratic basis and principle is equaled by no other in the realm of human thought. Other nations, who regard culture as the wisdom that proceeds from investigation and philosophic reasoning, tend to create and exalt an aristocracy of the intellect; Israel, in defining wisdom to consist in the perfect submission to the will of God as it stands revealed in the divine law, thus making the cultivation of the spirit open to all men, endeavors to build up instead a true democracy of the spirit.[121] Of course, Israel is greatly hampered in his spiritual task by the absence of a cultural autonomy. It is no easy matter for a Jew to remain steadfast in his faith in the

[117] P. II, Ser. 51, p. 19d.

[118] Ser. 21, p. 28d.

[119] P. II, Ser. 71, p. 48a.

[120] P. II, Ser. 68, p. 43d.

[121] Ser. 22, p. 29c.

lands of his dispersion. What with the coercive measures employed against him in all lands, and what with the terrible fate he is made to suffer for his loyalty to Jewish practice and belief in some lands, he finds himself everywhere in perpetual emotional distress.[122] It is not to be presumed though that these agonizing experiences serve no beneficent end. Even as the human soul grows and develops and attains unto greater perfection by the very life of struggle into which it is born, so is Israel's spirit purified and strengthened by contact with the world, its follies and temptations and cruel hardships.[123] None the less, it is true that his spiritual progress is considerably retarded by these unfavorable circumstances. But we have not abandoned the hope of ultimate redemption. We still look forward to the time when the evil purposes of our enemies will be frustrated, when the yoke of political enslavement will be removed, when complete spiritual emancipation will be achieved. When that time comes, as come it must, we shall serve our God unmolested and unhindered. Then God's power will be vindicated, and His name sanctified, throughout the world.[124]

Our opponents (the Christians) fondly believe that Israel is no longer destined to experience an earthly redemption; and to justify their contention they have to resort to some very curious assumptions. Faced as they are by numerous unfulfilled prophecies concerning the future of Israel, they try to solve the difficulty by putting forth the claim that in these prophecies Israel stands not for the descendants of the Patriarchs but for that small coterie of the faithful who, like Israel of old, proclaim and exalt the righteous life. Moreover, they further contend, these prophecies must be understood in a figurative and symbolic sense; the rebuilding of the Temple, for instance, denoting the heavenly Tabernacle. It is interesting to note, though, that while they are eager to appropriate the prophecies of good for the larger Israel, they are quite willing to surrender ungrudgingly all the prophecies of evil to the original bearer of that name. However, these preposterous claims need not much perturb us. They refute themselves. Surely, the prophetic utterance that God will never cast off all the seed of Israel[125] could refer to no one but the direct offspring of those who stood at the foot of Mount Sinai.[126] Nor do we find anywheres the slightest intimation that the words of our ancient prophets are to be interpreted figuratively. To the contrary, when the prophet says: "And the Lord answered me and said, 'Write the vision, and make it plain upon tables, that a man may read it swiftly,'"[127] we get the distinct impression that the prophets studiously avoided the use of mysterious and mystifying language.[128] The fact is that in the days to come, as our prophets assure us, Israel will experience a complete earthly redemption; that the long duration of our exile proves only our imperfect understanding of God's plan and purpose; and that the seed of Israel will endure to eternity, even as God's power extends to eternity.[129]

---

[122] Ser. 8, p. 12b; P. II, Ser. 55, p. 24b.

[123] P. II, Ser. 56, p. 25c.

[124] Ser. 19, p. 26d.

But the position of privilege in the realm of the spirit entails responsibilities corresponding thereto. The Jew, therefore, is called upon to abandon the pursuit after material things and to store up treasures that cannot be taken away from him, those spiritual treasures which enrich one's personality and truly satisfy.[130] If material wealth be his portion. he should remember that such possessions are never ends in themselves, but the means to a higher end. Money can be made to do God's work in the world, when spent to advance causes that are worthy and permanent.[131] Above all, the rich man must never forget that all riches belong to God; that the poor are God's agents, His messengers and collectors; and that to give of our means to those who suffer want is to dispense only what is God's.[132] To use his advantages aright, the man of wealth should regard himself as a trustee appointed by God and charged with the task of helping the poor and relieving the distressed.[133] In fact, whatever a man's possessions, material, intellectual, spiritual, he fails to reap the full benefit from these gifts unless he acts in the capacity of trustee whose function it is to enrich other lives. Surely, the individual cannot hope to achieve perfection in his own life and character, if in the process he neglects to help others attain unto the same perfection of spirit.[134]

---

[125] Jer. 31.37.

[126] P. II, Ser. 44, p. 11b; Ser. 56, p. 25d; Ser. 55, p. 24d.

[127] Hab. 2.3.

[128] P. II, Ser. 56, p. 25d.

[129] *Ibid.*

[130] Ser. 5, p. 7c.

[131] P. II, Ser. 71, p. 47d.

[132] P. II, Ser. 43, p. 10a.

[133] P. II, Ser. 71, p. 47d.

Wealth may add meaning to life, provided we use it for unselfish purposes. Power may prove very beneficial if it leads to self-conquest, the essence and highest achievement of all power. Intellectual accomplishments may be eminently worth while if they do not stifle the nobler impulses of the soul, if they do not deter us from living our lives in harmony with the divine will.[135] For, after all, what is man's advantage over other creatures, in all his labors? Is it not to play the role of the sun, to do for mankind what the sun seems always bent upon doing, namely, to win all sentient beings to a fuller realization of God's presence in the world?[136]

But to labor willingly and cheerfully for the happiness and perfection of others, as well as for our own, two things are essential. First of all, humility, genuine lowliness of spirit, must permeate our lives and control our conduct. For all possible perfection flows from this virtue. It is the only key that opens the gates to the life of the spirit. It is the sole cure for the diverse ailments of the soul.[137] Pride is the source of all the evils that infest our life. It is to maintain and fortify our self-pride that we often ignore the clearest mandates of the ethical life.[138] Moses became a true man (והאיש משה), a masterly personality, because he revered the greatness, and stood in awe of the potentialities of other human souls; because he was humble.[139] Verily humility is a precious garment, the robe of royalty, the crowning glory of the virtuous life.[140]

But in addition to humility we must have hope and faith and vision. The chief distinction of our humanity is its unlimited capacity for spiritual growth. For the human personality is dynamic, not static. Man does not come into the world in a state of perfection. He is never finished or unchanging. He is subject to improvement, to sanctification. He ever renews his strength, and mounts upward like the eagle, soaring ever higher and higher to a fuller and larger life.[141] And in this life of aspiration we should aim at the highest, and lift our gaze unto the highest for the fulfillment of our desires. All our ambitions and strivings should bear the stamp of the divine, should partake of the character of the service of God; and for their complete realization we should depend on no one but God.[142]

---

[134] P. II, Ser. 58, p. 28a.

[135] Ser. 20, p. 27d.

[136] P. II. Ser. 77, p. 53d—מה יתרון לאדם בכל עמלו? שיעמול תחת השמש—Eccl. 1.3.

[137] P. II, Ser. 43, p. 9c.

[138] Ser. 27, p. 34a.

[139] P. II, Ser. 43, p. 10b.

[140] P. II, Ser. 61, p. 32b.

IV

The high regard in which the בל"ע has been held by Jewish preachers for these many generations receives thus its chief justification from the important position the work occupies in the development of the Jewish sermon. Structurally, it marks a notable advance in the direction of greater unity of thought and simplicity of expression. Homiletically, it reveals, in its exegesis, a surer and more penetrating insight into the text-material and a more consummate skill in its use. In its essential aims and tendencies, it affords a clearer comprehension of the principal function and purpose of the sermon, and a more steady determination to move toward a previsioned goal, as well as a renewed emphasis on the social character of the religious ideal, making the elevation and refinement of the individual spirit find their clearest expression in harmonious relations with the social group. If in his style and methods of composition Figo reflected the influence of his literary milieu, in his exegesis he often matched the best models of the early Haggadah, and in his message he rose on many an occasion to the social vision and the spiritual intensity of the ancient prophets.

[141] Ser. 20, p. 27c.

[142] Ser. 14, p. 22d.

THE LETTERS OF RABBI MAHALALEL HALELUJAH OF ANCONA

A CHAPTER OF THE CULTURAL HISTORY OF ITALIAN JEWRY IN THE SEVENTEENTH CENTURY

By SIMON BERNSTEIN, New York

THE field of Jewish literature has been enriched in recent years by a considerable number of collections of "letters" or Diaries that are of exceeding value to the students of the history and the cultural development of the Jews of Italy. Collections of this sort, aside from the various works in this field published by Steinschneider, Berliner and Kaufmann, were "The Writings of Leon de Modena," by Blau[1] and the valuable documents published by Alexander Marx[2], Umberto Cassuto,[2b] and Cecil Roth.[3] It should now be possible to add to this aggregation of literary material the collection of "Letters" of the Italian rabbi and poet Mahalalel Halelujah of Civita Nova that is herewith presented.

The material under consideration is preserved in manuscript in the library of the Jewish Theological Seminary of America, in two copies, both evidently autographs and numbered respectively S11 and D194.[4] The first of these two MSS. is the older of the two, and many corrections, erasures and changes in this text have been introduced in amended or changed form in the second copy. Some of the letters that are included in the first collection have been entirely omitted from the second, and for that reason we are making use of the first text in this paper. The manuscript is entitled "Sepher Halelujah", ספר הלליה[5] (the author invariably spells his name without a "Waw"), and contains besides its sixty-five letters[6] some prayers conceived in the Cabbalistic spirit, as well as also some poems and liturgical pieces, one of which will be quoted below. At some future occasion we shall return to these poems and liturgical compositions, and will treat now only of the letters contained in the collection.

---

[1] *Leo de Modena's Briefe und Schriftstücke*, Budapest, 1905–6.

[2] Alexander Marx, Glimpses of the life of an Italian Rabbi of the sixteenth century, *HUCA*, volume I, p. 605. [2b] Cf. footnote 4 to letter XXXI.

[3] Cecil Roth, The Memoirs of a Siennese Jew, *HUCA*, volume V, p. 353.

[4] A third copy of his MS. is registered in the collection of the Baron David Guenzburg (Cod. 247). The existence of this MS. was first mentioned by Alexander Marx, *JQR*, (New Series) volume 9, p. 329.

The letters, or "writings" (כתבים) as the author terms them, are addressed to various individuals, friends and relatives of the writer as well as to communities, written either in his own name or simply "in behalf of officials of the community" of Ancona. A small number of these letters deal however with the personal or family interests of the writer. Most of the letters are devoted to matters of public and communal concern. When dealing with important matters the author cites also the letters addressed to him by his correspondents to which his own serve as a reply. In a certain sense we are dealing here with some kind of "Selected Writings," as duly becomes evident to us from the affirmation of the author himself that he is not mainly concerned here with the preservation of important literary material for the future historian, but rather to prepare exemplary letters for those studying Hebrew composition and anxious to make use of "a pure and mellow style."[7] Such indeed is his avowal in the preface, in which he says as follows: "In this book, small in quantity and rich in content, I sought to find valuable things and to open the gates of righteousness by which to teach knowledge to man, to give the fools wisdom, to teach their tongues to speak clearly in a diction that is pure and pleasant, both to God in prayer and supplication and in their writing to their fellow-man." But Halelujah sought to combine the good with the useful. He did not compose any special sample letters for the purpose, as various authors have done before and since his day, but placed before his readers the very letters written by him to various people on sundry occasions, in which letters there is much of public and historic interest, proving that even in such matters it is entirely possible to employ a good and pure style based on Biblical and Talmudic diction. We are to infer, of course, that at the same time the author intended also to place on record for future generations many important events in the communal life of his city, events in which he was an active participant and effectively in one form or another.

---

[5] The title-page carries the following description of the contents of the MSS.: ספר הלליה, ממלל גבורות ה' משמיע קול תהלתו בתיקון וספר ודוי לשכיב מרע ותפלה אתה עד היותה עם התיקונים והכונות הראויות לתת להן וי"ח שירים שקולים במשקל בתנועתם ויתדותם ושבעה להם חרוזים שבעה שבעה גופי עבירות מבזים וחידה יפה כתרצה שקולה ג"כ ביתידות ותנועות וחמשה וששים כתבים בלשון צח ונעים ישמח הקורא ויגל המעמק בהם לכבוד ה' ולזכות בהם את הרבים יצרתים אף עשיתים אני הצעיר מהלל אל הלליה בן שבתי זלה"ה מציויטה נובה כיד ה' הטובה עלי יגמלני בחסד למען שמו באהבה.

[6] The total number of letters amounts, however, to 70. In addition to the 65, there are 2 letters contained in the first copy only and omitted from the second copy, and three more letters written on the inside cover of the first MS.

[7] A number of such Sample Letter-Writers in Italian-Hebrew literature of that period are mentioned by Blau, ibid. p. 3. According to Blau, however, there is no historic significance attached to the letter collections mentioned by him. One author of such a Letter-Writer of a later period is mentioned by Neppi-Ghirondi (p. 255).

There is no available biographical data about the author outside of those facts or hypotheses that one is able to gather either from this or others of his works that repose in the manuscript collection of the Jewish Theological Seminary. The first one to mention him was Azulai, who notes in his *Shem Hagedolim*, the following: "*Kodesh Hillulim* by Mahalalel Halelujah, rabbi in the city of Ancona, of the year 1660, and it is a simple commentary to the Pentateuch, which I saw in manuscript. He also composed a book named *Halel Gamur*, containing sixty-eight legal decisions. He is also the author of *Sepher Halelujah*, of poems and riddles and so forth."[8] He is also mentioned in the volume of Responsa entitled *Mayim Rabim*, part 4, paragraph 9, in connection with the quarrel (מחלוקת) between himself and the poet Immanuel Frances in 1674 with regard to the rights and uses of communal institutions (*Heḳdeshot*).[9] It was probably from these sources that Neppi drew the information that he gives us about Halelujah in his זצ"ל, pp. 233[10] and 145. Neppi adds also that "He has in his possession a manuscript decision of this rabbi declaring unfit for use a Sepher Torah to the outer side of which have been pasted thin sheets (of parchment)," a decision as a result of which a quarrel broke out between himself and R. Joseph Fermo of Ancona, necessitating the submission of the matter to the rabbis of Ferrara for a final adjudication.[11] The "Writings" published here (I, II) throw a clear light on this important quarrel, and add much interesting information about the details of this occurrence, which again enables us to form a clear opinion of the social and religious standing of the Italian Jews in the period under consideration.

---

[8] The two works קדש הלולים and הלל גמור are mentioned by Halelujah himself in his preface to his *Sefer*: כן אתפללה לאל חיי יחנני ויברכני להוציא לאור שנים חבורים אחרים שעשיתי הוא הוא פירוש על התורה בדרך פשט ורמז קראתי אותו בשם קדש הלולים והחבור השני בשם הלל גמור קראתיהו והוא מחמשה וששים פסקים נכוחים למבין וישרים למוצאי דעת.

[9] This litigation over the הֶקְדֵּשׁוֹת ensued out of the bequest made by R. Zecharia of Porto in bequeathing all his possessions to the charitable institu-

In very few of his letters does the author trouble himself to note down the day, month or year in which it was written. This omission may be explainable on the ground that the author was not concerned exclusively with the historic value of the recorded event, but also and mainly, with its usefulness as an example to would-be writers, and the value of such material is not enhanced in any way by the addition of dates. It should also be noted that it was the prevalent practice among many of the Italian rabbis of the period not to be at all particular in noting down the date in all such documents. In only a few instances are the dates preserved, which make it possible for us to approximate more or less correctly the exact time when certain important events in the life of the author took place. Letter V, for example, furnishes us with a memorandum that he wrote down "when he heard that the City of Mantua had been conquered by the Germans, and its Jews suffered much persecution on the 9th day of Ab, year 5389

---

tions of the community. His heirs disputed the will and brought the matter for judgment before the Rabbis, while the community was strongly opposed to any change, demanding the strict fulfilment of the bequest. As counsel for the family appeared R. Mahalalel Halelujah, while the interests of the community were represented by the poet R. Immanuel Francis. The latter had the full moral support of Rabbi Joseph Fermo of Ancona, v. *Metek Sefataim* ed. Brody, pp. 6, 78.

[10] Neppi mentions our MS. under the name *Sefer Mahalalel*, obviously confusing the book with the first name of the author.

[11] v. Neppi-Ghirondi, p. 145.

(1629)."[12] It is to be assumed that at the time he made this note he was at least twenty, or perhaps twenty-five years of age, and that therefore he was born in the early years of the seventeenth century. From the above mentioned quarrel over the *Heḳdeshot*[13] we learn that in the year 1674 he was active as a Dayan in his community, making it certain therefore that he did not die before the year 1675, from which we gather that he surely must have attained to the age of seventy, and perhaps more. We have sufficient reason for assuming that he attained to even a greater age than that, as would appear from the poem that he composed about 1666 in honor of Shabbetai Zebi and Nathan Ghazati,[14] almost eight years before the above-mentioned quarrel, where he says that "he no longer enjoyed the light of his eyes," an evident hint of extreme old age. In fact, de Rossi in bringing the name Halelujah in his *Dizionario*, referring exclusively to Azulai's above mentioned note, writes: "rabbino d'Ancona in 1680"—although it is difficult to see from what source de Rossi could have derived this particular date. It may even be assumed that de Rossi misunderstood Azulai's figure ת"ך as being the date mentioned by him. He was born in Civita Nova where his father apparently spent all his life. He speaks of a brother and also of an uncle, Rabbi Isaac Hakohen, brother of his mother of Sinigaglia, and his brother-in-law Hayyim. The earliest occurrence in the life of the author noted in his book is the above mentioned conquest of Mantua, while the latest is the poem written in honor of Shabbetai Zebi, these manuscripts covering a period of 40 years, from the year 1629 to 1669 approximately.

From his letters we learn that the author married twice. His first wife was the daughter of Rabbi Eliezer Hayyim Nizza,[15] the well-known author of *Dameseḳ Eliezer*, father of Isaiah Nizza, author of the *Derek Yashar*,[16] father of Rabbi Shlomoh Nizza. It appears that fortune did not particularly favor him in those early days, for a short while after his marriage he informed his father-in-law that he had left Ancona and went to sojourn with his father in Civita-Nova (XV, XVI). He duly informs him of the causes of his removal in guarded and exceedingly polished language, but one can see clearly from it all that the sole cause of this action was his material struggles. On another occasion, however, Mahalalel is much more frank with his father-in-law and pours out the sufferings of his heart in his poverty to him. It appears that he subsequently left his place of abode, most likely Civita Nova for Sinigaglia seeking to become there a "teacher of the young,"[17] but that he was disappointed also in this quest and therefore turned to his father-in-law living at the time at Lugo, with the request to "find rest and halting place for him in that town" (XVII). He explains the cause of his circumstances by the fact that the economic conditions of the community of Sinigaglia were exceedingly difficult, all its members being poverty stricken and without means, added to which there also apparently were some spiritual and intellectual conditions that made life unpleasant for him in that town. He was prepared, as he expressed it, "to skin a carcass in public" if only he could be saved from his terrible sufferings. But it appears that his hope was doomed to disappointment, because we fail to find any change in his place of residence before his acceptance of the rabbinate of Ancona. It is while there that we find him in active correspondence with the family of his father-in-law, from which letters we learn that the latter had died in the meanwhile (XV–XXI). About 1642 Mahalalel married his second wife, the daughter

---

[12] Hallelujah refers here to the expulsion of the Jews from Mantua by Ferdinand II after his conquest of the city. The exiled, about 2000 in number, after undergoing many tribulations, received permission to return to the city, as related by אברהם מסראני in his pamphlet הגלות והפדות, Venice 1634.

[13] v. footnote 9.

[14] The poem was published by me in the *S. A. J. Review* of November 12, 1928, and was reprinted from there in the monthly מזרח ומערב, volume III, 9, p. 200. In both editions the poem appeared without the textual variations and explanatory footnotes.

[15] Said R. Chaim Eliezer Nizza is not to be confused with another Rabbi

---

of Padua of the same name around whom a quarrel was waged between the various factions of the community (Blau, ibid. p. 173).

[16] Mentioned in Davidson's אוצר השירה והפיוט, volume I, p. XXXII.

[17] Being an instructor to pupils does not necessarily preclude any intention on his part of occupying a position as Rabbi in the community. In numerous communities of Italy it was obligatory for the Rabbi to devote part of his time to the teaching of Talmud to pupils. In several instances the question of this obligation was the subject of controversy among the Rabinnical authorities, cf. Marx, *HUCA*, ibid. 613, footnote 23.

of R. David Ginattavo of Rome (XXIV–XXV), after the much lamented death of his first wife in whose memory he published the letters of mourning and condolence written and received by him at the time of her death.

With regard to the year in which Mahalalel was appointed to the rabbinate of Ancona it is to be assumed that it happened shortly after the year 1640.[18] We arrive at this conclusion from the letter of a certain teacher, who sent him a poem with the remark that "I composed this poem in honor of a wedding and sent it to Modena to the scholar Leon de Modena, and it pleased him greatly." Leon de Modena died in 1648 and from the letters exchanged between them it becomes clear that Mahalalel already had been settled in the rabbinate then for some time. He stayed in this position as it seems for the rest of his days, well over 30 years, a period of years surprisingly long for both the rabbi and the community, R. Mahalalel having been not by any means one to give way in his opinions before others without a struggle, himself admitting to the fact that he was "as vengeful and as much a bearer of a grudge as a serpent" (XXVI). He would not flatter the wealthy of the community and would admonish them publicly on occasion. "To a certain rich man, one of the leaders of the community, who had promised in his presence on his wedding day half a ducat to a poor man and then failed to give it," he sent an urgent order to fulfill his promise. When he had once arrived at a decision he would remain steadfast, unmoved even by the opinion of the greatest rabbis officiating in the most celebrated communities.

We have already noted that on two separate occasions quarrels broke out between Mahalalel Halelujah and Joseph Fermo, another of the rabbis of Ancona. The first of these quarrels arose over the above-mentioned scroll which R. Mahalalel declared unfit and Fermo declared fit. As it appears from the letters, this occurred in the year 5423 (1663), while the second quarrel over the *Heḳdeshot* occurred in 1674. As regards this latter quarrel, quoted also by Neppi, there is even no hint of it in the letters, which may be explained by the great age of the author, which caused him at the time to abandon the recording of his letters and his memoirs and to devote himself wholly to study. Yet even with regard to the cause of the first quarrel, in which according to Neppi, his antagonist was R. Joseph Fermo it would appear from the letters that this was not at all a quarrel with Fermo, because his name is not mentioned at all in them. From "the letters" it would appear rather that this was a quarrel between R. Mahalalel and the rabbis of Venice who objected to his decision despite the fact that twenty-three other rabbis held the scroll fit. The Venetian rabbis professed to find in this action a clear violation of the law "to incline after the majority," and strenuously objected to such conduct. Halelujah was in no hurry to bend the knee before them, but at the same time he realized the seriousness of the situation and did his utmost to calm them. He implores them to await his coming to Venice, expressing his assurance that "after meeting him face to face" and discussing the matter they will duly recognize the justice of the decision, praying for peace in the meanwhile, and for the quarrels to cease.[19]

---

[18] Azulai's comment that R. Mahalalel was Rabbi in Ancona משנת ת'ך is not meant to read "since that year," but "within" that year, and his election to that post may have taken place several years previously.

The figure of R. Mahalalel as it emerges from his correspondence impresses us as of a man exceedingly active in the work of his community. It is evident that many of the matters that he occupied himself with really were outside of his rabbinical duties, and that he occupied himself with them out of pure devotion to his community. A youth setting out for some strange place, and having no friends or relatives to look after him, finds a faithful friend in him who supplies him with letters of recommendation to a certain resident of that community, asking him to look carefully after the youth's welfare (XXX). A man put in prison finds in him a protector and successful pleader (XV). To a scholarly householder who had lost his fortune "and wandered away in search of bread," R. Mehalalel furnishes warm recommendations to various leaders of communities, asking them to come to his assistance. He addresses strongly written letters to the various

---

[19] It is noteworthy that this exchange of correspondence was excluded by the author from the second copy of his MS. Obviously, this was either done in deference to the decision of the Rabbis of Venice, or because by eliminating his letters he wished to intimate the cessation of his opposition to their decision.

Jewish communities, imploring them to come to the aid of "a poor unfortunate woman who has a marriageable daughter" and is obliged to wander from town to town in order to raise the needed dowry for her. But as the woman in question was old and feeble and could not travel about, she decided to send forth a "messenger faithful to the sender," Judah son of David by name, who volunteered to perform this virtuous deed for her, and R. Mahalalel testifies that he is an honest man of good family, and he therefore gave him a 50-page ledger in which to enter the various donors and their donations (XXXI). R. Mahalalel did not confine his activities, however, to small and local enterprises, but was the spokesman of his people in the fullest sense of the term. When his community was threatened by an impending unfavorable edict he turned immediately to the leaders of the Jewish community of Rome, asking them to "intervene for us to recall the edict of the Duke, great be his glory" (VI, VII). One of the letters is addressed to the officials of the Jewish community in Rome, while another is addressed to a certain Rabbi Izchak Cave whose wisdom and his devotion to his people R. Halelujah praises in terms of great esteem and recognition. It may be assumed that he was either a leading official of the community with whom Halelujah was in personal relationship, or that he was a prominent member of the Jewish community in Rome who was influential with the authorities. Cave seems to have been a close friend of the renowned Rabbi Hezekia Manoah Corcos to whom on several occasions he conveyed the regards sent through him by R. Halelujah[19a]. In this manner we find in his letters many important bits that throw a clear light on the civic, economic and spiritual conditions of the Italian Jewry of his day.

The spiritual image of R. Mahalalel Halelujah as a religious teacher and leader emerges clearly from the letters that he exchanged with some of the leading men of the age in Italy. Beside his father-in-law R. Eliezer Hayyim Nizza, and his son Isaiah, and the son of the latter Shlomo, all of them great in the knowledge of the law, we find among his friends and intimates such men as Simhah Luzzatto,[20] Rabbi Hezekeiah Manoah Corcos of Rome,[21] Samuel Meldola and Yechiel Norzi of Mantua,[22] Jacob ben Moses Halevi of Venice,[23] Yedidia Galante[24] and David Sabibi.[25] When the quarrel broke out in the Yeshivah of Ancona over the question whether it was necessary to redeem the unborn first born that had been killed before birth on account of its mother's execution, (בכור שנטרף) and it became impossible to bring about peace between the combatants, R. Mahalalel turned to the heads of the Yeshivah of Mantua to decide the matter. Ancona was at the time a renowned center of learning, but despite this, some youths would travel to Constantinople or Prague for study. R. Mahalalel invariably gives them his blessing before their departure (XXII, XXIII). They are celebrating the Siyum of the tractate Baba Kamma, and there are such fine discourses delivered in honor of the event that R. Mahalalel feels moved to record his gratitude, and offer a prayer to the Almighty "to attune his ear to hear from these men of wisdom more such words of wisdom, these men of wisdom who are the light of the children of Israel everywhere" (III). Not only the grown ups of the community were engaged in the study of the Torah, but also the boys and the youths, who formed a circle named "Shomrim Laboker" for morning prayer and study. This group "praise be God, is growing greater every day in study and deed," and R. Mahalalel, while bestowing due praise on them, takes advantage of the opportunity to refute the evil rumors spread about these youths by certain evilly-disposed men who tell us "not to put any faith in these students who pretend to virtuous deeds before their fellow men while they are actually unclean in their practice" (IV). This declaration of his on behalf of the youths surely was of considerable benefit to them, backed as it was by the rabbinical authority. How great was the benefit accruing from this authority we gather from the already-mentioned quarrel between rabbi Halelujah and the heads of the Venetian Yeshivah with regard to the Sepher Torah declared unfit by the former. This occurred in the year 5423 (1663), at the time when Mahalalel already was a celebrated rabbi and a man of sixty or over, and yet all these did not hinder the Venetian rabbis from coming down on him with the greatest possible vehemence and commanding him to abjure his own opinion in favor of theirs at once.

[19a] On R. Izchak Cave cf. Hebr. footnote 1 to letter XII.

---

[20] The fact that Rabbi Halelujah was in personal relationship with R. Simone Simḥa Luzzato is not only proven by the letter of eulogy he wrote on the death of the latter (XXIX), but also confirmed by the discussion with the Rabbis of Venice during which R. Halelujah referred to R. Simḥa as sharing his views on this particular subject.

[21] Regarding this great Rabbi v. Neppi-Ghirondi, p. 105, Vogelstein-Riger, *Geschichte der Juden in Rom*, volume II, p. 266; Abraham Berliner, *Aus Schweren Zeiten*, p. 12. Out of the eulogies there became popular the following proverb of the Pirke Aboth: אם אין קמ"ח (ר"ת: חזקיה, מנוח, קורקוס) אין תורה.

[22] The signatures of the Rabbis Samuel Meldola and Yechiel Norzi are attached to a responsum subscribing themselves as the "heads of the ישיבה דמנטובה"; on the first v. Neppi-Ghirondi, p. 355, and on the second ibid, p. 173.

[23] R. Jacob Ben Moses Halevi is described by Ghirondi (p. 159) as ראשון שבקדושה בישיבת ויניציאה. He was one of the seven Rabbis assigned to investigate the activities of Nathan Ghazati, the confidant of Shabbetai Zebi. He is the author of a poem dedicated to R. Azaria Figo, published in the preface to the בינה לעתים of the latter wherein he calls himself מצעירי תלמידי הרב המחבר.

[24] Yedidia Ben Mose Galante is probably a member of the Venetian family of the same name prominent for its Rabbis and Talmudic authorities, v. Vogelstein-Riger ibid, p. 86.

[25] Cf. Neppi-Ghirondi, p. 83

Hard indeed were the material circumstances of the Jews of Ancona, particularly so in the first half of the seventeenth century or even a bit later, say about 1650. The frequently changing government drained the last drops of blood out of their Jewish subjects, destroying the economic existence of the traders and merchants. "All lay in wait for blood, blood touched blood" (the author makes use here of the two-fold meaning of the Hebrew word *damim*, meaning both blood and money). Taxes rose sky high, "aside from the woes that increased every day and every hour, each day bringing an increase over the foregoing one (IX). And suddenly, there came the edict forbidding the Jews "to either buy or sell any merchandise," and the Jews of Ancona, the most of whom engaged in trade, suddenly found themselves faced with the necessity of becoming village-peddlers, because they had nothing to depend on now, and had to wander from place to place and from town to town with heavy loads on their backs." R. Mahalalel thereupon turned to the Jewish Community of Rome, imploring its leaders to use their influence to have this edict recalled; and it is a fact that the cancellation of all such edicts involved a heavy expenditure on the part of the Jews, frequently resulting in the total impoverishment of the communities involved. On a similar occasion a messenger was dispatched to Rome to apprise the leaders of that community of the unfortunate facts, this messenger carrying a letter from Mahalalel. In addition to all these there came the Chmielnitzky horrors of 1648–49 in Poland and the consequent incursion of thousands of the refugees into Italy, where they became a charge on the already impoverished local communities. There was need for redeeming, at an exorbitant price, the captives of Poland and other countries that were being brought to Italy, and this work of redemption, held so sacred by the Italian Jews, spelt a heavy sacrifice to them. They were also called upon to render assistance to the Jews remaining in Poland after the slaughter, for which purpose, special travelling representatives visited all the Italian communities, where they were as a rule cordially received.

Along with all these occurrences Halelujah transmits to us an interesting series of correspondence that is of great historic value (VIII, IX). The heads of the Venetian Jewish community addressed a letter to the community of Ancona, requesting it to participate in raising funds for the redemption of several hundred Jewish prisoners held at Malta.[26] The Venetians complain that they had been informed that the Anconans usually "advise" the Polish representatives to go to Venice, their own contributions having been sent there, when as a matter of fact, they weren't. The Anconans were wont to assist liberally in ransoming the captives in the past, but haven't done so of late. They are misleading these representatives and making the burden all the harder for the Venetians, and it was about time that they discharged their own duties and eased the burden of another respectable community. To this letter Halelujah replied "in the name of the officials of the Ancona community"[27] that they had never told such things to the Polish representatives, and if these do say such things, one should remember that these men have trained their tongues to utter falsehoods "for the sake of bread and evil" (a delicate play on words here: קלקלה=כלכלה). The Jews of Ancona did help, and are helping these victims right now, but owing to the deplorable economic condition of the community, the taxes and the levies that consume everything, they are unable to participate also in the work of redemption in the present instance. There certainly is the ring of sincerity in the foregoing letter, and it serves therefore to reveal to us the difficulties in the life of the Jews of Ancona at the time. They would never have shirked such a virtuous deed as the redemption of captives, particularly when it concerned the well-being of hundreds of souls, if it had not been for their own deep misery.[28]

---

[26] On the redemption of Jewish prisoners in Malta cf. Cecil Roth, *Hazofeh*, Quarterly Review, 1925, issues 3 and 4; S. Assaf, *Zion*, Tel Aviv, volume II. The above two letters were published by the present writer in *Hazofeh*, v. 13, issue 4.

[27] To conduct correspondence in affairs of the community was part of the duties of a Rabbi in Italy. Cf. Marx, *HUCA*, ibid p. 612.

Living as they did under such terrible circumstances, we need not wonder to find some undesirable elements in the Community of Ancona.[29] Rabbi Halelujah complains bitterly more than once about these evil-doers, feeling it his duty to exhort them to abandon their evil ways. Here and there youths take to gambling and do other evil things, even some Talmud students being found among these evil doers. False witnesses and informers bring misfortune to honest men, an unpleasant experience which he had in his own family, his uncle Isaac Hakohen being obliged to escape from Ancona to Sinigaglia where he suffered imprisonment for a time on account of the enemies that sought his destruction (X, XI). Even our author himself did not entirely escape this bitter experience, receiving the "evil fruit" from one of his acquaintances who "became a drawer of interest instead of the observer of the Covenant" and despoiled him without mercy (XXVI). And as far as the moral status obtaining at the time in certain ranks of the community, one should pay particular heed to the "seven Verses" composed by Halelujah and included in his book (XXVII, XXVIII). Our poet writes strongly "against those whose paths are crooked, soiled by seven-fold sins, in the sight of the sages and prophets, whoever keeps from them the God of mysteries will be compassionate to him."[30] And they are the following: the idlers (the lazy ones), the players (of cards), the thieves, the gluttons (and guzzlers), the fornicators, the haters (the bearers of hatred and enmity), and the power-seekers (those who run after power and oppress their fellow-man). It is understood of course that the author devoted his efforts to writing of these matters not for any abstract reason, but because these evils were every day occurrences in his community, which seems to have included both light and shadow in it. Such deplorable conditions obtained not only in the moral life of the community but to a considerable extent in its religious life as well. R. Mahalalel felt obliged to send away one of his relatives to a strange town to pursue his studies because "the status of the Torah is poor in our place, neither adding nor diminishing in sanctity." And he adds bitterly: "The Torah lies in a corner, no one seeking it, all of them contenting themselves with the thoughts of the stranger, strange thoughts and speculations became their food, to turn the Torah to ridicule" (to turn it into falsehood).[31]

---

[28] This must have happened most probably in the years 1650–51. Of a later date, of the year 1652, we have a letter by R. Joseph Fermo, published by David Kaufmann in *REJ*, volume 25, p. 213, corroborating, practically in its entirety, the picture drawn by R. Halelujah of the economic conditions in the community.

[29] Cf. the reports of Leo de Modena in his ספר חיי יהודה on the deadly attack upon his son Zebbulum (in 1622) by a band of Jewish "evil-doers." At the time of R. Halelujah, approximately twenty years later, the same conditions were obviously still prevailing.

Rabbi Mahalalel was a strong adherent of the Cabbala and composed a number of prayers in its spirit, which are included in the *Sefer Halelujah*. He also composed several rhymed liturgical poems that apparently were intended to be included in the order of prayer by him.[32] It is quite possible that they really were included therein, especially in the synagogues that were under the influence of the Cabbalists. Among these is one hymn that could properly be considered as a historical document of first importance, namely his poem in honor of Shabbetai Zebi and Nathan Ghazati. Halelujah, who was an eye-witness to the Shabbetai Zebi affair from its beginning to its end, appears in it as an ardent believer in this pseudo-Messiah and glorifies him in a style scarcely to be equaled among all others of the rabbis who followed in the wake of this misleading light.[33] From the style and the liturgical form of this composition it is apparent that it was intended to be used as a hymn in the synagogue, and it is possible that it was sung in the chapels (מנינים) of the Sabbateans. The author was almost 65 years old at the time of the composition of this hymn, and perhaps even older, and it is almost impossible for us to know whether the extent of his adherence to the sect was limited to the composition of the hymn or whether he also engaged in active proselytizing on its behalf in his community. One may assume also that the belief in Shabbetai Zebi must have been quite widespread in the Ancona community, as it is scarcely believable that its rabbi would dare to compose and also include in his book such a hymn, on a topic of so much contention and evil among the Jews, without the previous knowledge that it would be acceptable to the greater majority of its members. At any rate, there is no effort whatever made by the author to hide it from any one.

---

[30] נגד אותם אשר אורחותיהם עקשים ונלוזים בשבעה עבירות נמאסים ונבזים כהודאת חכמים וחוזים, הנזהר מהם ירחמהו אל חכם הרזים. ואלה הם: הבטלנים, הצחקנים, הגנבים והלסטים, הזוללים, המנאפים, הקנאים והמשתררים.

[31] It is highly improbable that Halelujah refers here to Ancona or even to Sinigaglia. Most probably he means Civitanova.

[32] A poem on the Ikarim was published from this MS. by Alexander Marx in *JQR* v. 9, p. 329. V, also footnote—where Marx also mentions Halelujah's poem on Shabbetai Zebi published below.

This hymn, quite aside from its historic importance, also has a psychological interest for us. We have two MSS. copies of this poem which differ from one another. The first one contains a long introduction full of glorification of Shabbetai Zebi and Nathan Ghazati, their names written large in "Assyrian Script," as a mark of great sanctity and honor. The words "Zebi" and "Shabbetai" are invariably written out in large "Assyrian" letters, to be distinguished from the rest of the text. But on the margin we find a note, added later in the handwriting of the author, which runs as follows: "See at the end of this book. You will find there the same poem in another version; the latter poem is to come in place of this one." The poem in the second version which is also included in the second autograph has very important changes: the introduction is entirely omitted; only a few lines are introduced without the mention of either of the names. The words "Zebi" and "Shabbetai" are written in ordinary letters so that the reader would never notice that the subject matter bears any relationship to the false Messiah. The hymn is here described simply as a prayer for the redemption of Israel and the coming of the Messiah.

---

[33] Regarding the various Rabbis who have avowed their faith in Shabbetai Zebi, cf. Freimann עניני שבתי צבי; v. also S. J. Hurwitz העתיד, vol. II and VI.

The cause of these changes becomes evident at first glance. Between the writing of the first and the second versions something serious had apparently happened; the Shabbetai Zebi drama had come to the test and the Messiah had succumbed. The author is now seeking to hide his shame or fears by removing all suspected passages from the hymn. It is worthy of note that even at the time when the author was making these changes he was still a faithful believer in the pseudo-Messiah and expected the redemption ultimately to come through him. Shabbetai Zebi was indeed a prisoner at the time, but the writer was still hoping for his liberation, and prays for his welfare. The author made several changes and erasures, but his heart still dwelt feelingly on the subject, and he could not bring himself to obliterate all trace or hint of Shabbetai Zebi. Even in the second version the critical reader will discover some open hints of his strong faith in the Messiah, who was certain to be eventually favored by God and returned to his people, so that "our eyes may behold the King in his glory."

In connection with Halelujah's relationship to the Shabbetai Zebi movement we ought to take note of another eloquent fact that thus emerges from these events. At the very time when he was singing hymns to Shabbetai, the above-mentioned poet Immanuel Frances was broadcasting his own poems, composed by him in co-operation with his brother Jacob, that were full of hatred and curses against Shabbetai Zebi and his adherents.[34] The struggle that raged at the time between the adherents and the opponents of Shabbetai Zebi found its expression also in poetry and in hymns, and it is quite easy to infer that there should have been a serious enmity between Halelujah and Frances, even as this quarrel raged in all Jewish communities for almost an entire generation. And yet we find, only a few years afterward these two in quite friendly relationship and maintaining a high degree of mutual respect towards each other. This latter event took place at the time of the already mentioned quarrel over the matter of the *Heḳdeshot*, between 1673–4, or about eight years after the Shabbetai Zebi episode. Also in this case they appear as antagonists, being on opposite sides of the question, but this is a battle that it is possible to conduct in comparative peace and calm, which they did. When Halelujah opposes himself to the opinions of Frances he craves "his honor's pardon several times over" and ends up by saying: "therefore to the great sage Frances thou shalt say that I extend to him my peace and I kiss his clean hands together with those of all sages and leaders, may God guard them from now to eternity."[35]

---

[34] This is the well-known collection of poems deriding Shabbetai Zebi and his followers composed by the brothers Jacob and Immanuel Frances and published under the name צבי מודח by Mortara in קבץ על יד, Vol. XIV.

Of the 65 letters, only 31 are published herewith, eliminating the remainder consisting of letters of no historical value and obviously written exclusively for the purpose of furnishing "samples" for letter writing. It must, however, be emphasised that also the letters omitted are of a distinct cultural value; firstly, we learn from their language and style the proficiency of the knowledge of the Bible and Talmud on the part of those circles,[36] and secondly, we glean a description of the social and cultural conceptions of many of the customs and traditions that prevailed in Italian Jewry in that period.

I take this occasion to express my deep appreciation to Prof. Alexander Marx, librarian of the Jewish Theological Seminary of America, for his friendliness in placing at my disposal with his usual courtesy the manuscripts, and for his readiness of service which he has extended to me in this respect.

---

[35] v. מתק שפתים ed. Brody, p. 6.

[36] Evidence of the deep knowledge of the Bible and Talmud can be sufficiently gathered also from the letters published herewith. There is seldom a phrase not interwoven with Biblical and Talmudical passages. Sometimes a letter is almost entirely composed of such passages. For this reason the present writer saw fit to abstain from pointing out the Biblical or Talmudical source of each of such passages. Only when absolutely required by the contents of the passage are the sources noted.

A

POEM IN HONOR OF SHABBETAI ZEVI AND NATHAN GHAZATI

נוסח א

שיר מזמור עלי עשור להודות ולזמר לכבוד אלקינו והדרו ולכבוד מלך משיחנו נ׳ר׳ו׳ אשר בעיר איזמירני זרח אורו ה״ה הרב הגדול רבינו שבתי צבי גבור בתורה כאריה וכלביא אשר עליו הרב רבנו נתן העזתי בעיר עזה חזון חזה ועל כבוד מלכותו ותפארת גדולתו הרבה נבואתו ואני הצעיר מהללאל הלליה זעיר מן חברייא בן שבתי ז׳ל׳ה׳ה׳ מציויטה נובה בשמעי שמועה זו הטובה גם כי אין אתי אור עיני אזרתי מתני ובכל כחי ואוני נערתי חצני להלל לאל חיי אשר כזאת השמיענו וקיימנו והגיענו לראות קץ גלותנו המר ושבועתו לנו שמר לכבודו ולכבוד מלכנו צדיק כתמר ואשא משלי ואומר:

— — — ◡ — — — ◡ — —

מקדש מאד נורא בהר ציון
לא עוד במר תשב כמו אביון

התעוררי ציון קחי תורה
ירום בקול תודה וקול זמרה[1]

למדו נדיבי עם להנעים שיר
כל איש ואיש אם דל ואם עשיר

לכם קדושי אל בני עליון
ראוי להקדים שיר ברום חביון

נוסח ב

שיר מזמור עלי עשיר להודות ולזמר לאל חי ברית שומר על גאולתנו ועל פדות נפשנו ועל בנין בית מקדשנו לכבוד האל ישועתנו שומר ברית אבותינו פודנו ומצילנו בידי תשבי ובן דוד גואלנו צדיק כתמר ואשא משלי ואומר:

— — — ◡ — — — ◡ — —

כי ממך מאז דביר נעדר
אל חי לך שמר אשר נדר

זהר צבי מלכך פאר יזרח
יציץ כבוד נזרו וגם יפרח

כהן וגם לוי וישראל
קומו בנבל רננו אל אל

העומדים אצל ארון עולם
שם תתנו כבוד לשר מושלם

---

[1] בנוסח א: ידיו בעוז רב לו וקול זמרה.

אם תאמרו מי זה גביר שלם   פניו מאירים בו כאור יומם
הן הוא משיחנו ולא חולם   יפעל וישלים כל אשר זמם

לאל רקיע אור וככבים   עם עש כסיל כימה ומזלות
רנה ספו עתה ובשביבים   גילו בגואל זה שאו קולות

הָאספו יחד כמו אחים   כל כוכבי לכת בתשבחות
שירו[2] פדות שלח לנדחים   כלם שמחי לב בהצלחות

לך ש׳ב׳ת׳י׳ עליון וראש שבעה   נאוה גדולה זו וממשלה
לכן שְׁמָךְ האל גדל דעה[3]   חתם כאיש תשבי ברום עולה[4]

לבוש בהוד ירד בכל אונו[5]   יפדה בכור נתון לגדופים[6]
יקריב ישרים לו בשלחנו   יורה בסוד תורה דבש צופים

יָהּ צור מרומם על ברואיך   אחד בשם שלם לעולמים
כן שמחנו עם קרואיך   לראות בטוב צפון לקץ ימים

ויוסף המחבר שאת משלו על השיר דלעיל במשקלו להראות העמים והשרים את יפיו כי מחרו״ז טוב פריו יען וביען תשי״ב אותיות בו כתובות כמספר תשבי ת׳ש׳י׳ב לב אבות וקצ״ב תיבות בו קבועות כמנין צ׳מ׳ח׳ ל׳ד׳ו׳ד מצמיח ישועות פקדהו נא בטובו לראות חזה לך האות:

הבט ראה שיר זה במכתבו   אתה משורר בו למלך רם
כי בו באותיות בכל ניבו[7]   ת׳ש׳ב׳י׳ מבשר טוב במספרם[8]
אם גם בעיניך באמרותיו   תביט ותבין בם בבנינם
תמצא ועוד תראה במלותיו[9]   צמח לדוד צץ במנינם[10]

---

[2] נ״א: במקום „שירו״ כתוב „יען״.

[3] נ״א: כי גאלני זה גדל דעה. האל, ובכ״י אל, נגד המשקל.

[4] נ״א: שמך שמו נקרא ביום מילה (רמז לשם תשבי=שבתי).

[5] נ״א: לצים יתעב הוא בבית דינו.

[6] נ״א: ימית בפיו רשע בגדופים (ש״צ קרא לעצמו בכור).

[7] נ״א: תבין באותיות רשומות בו.

[8] נ״א: איש תשבי תמצא במספרם.

[9] נ״א: תראה סביבותיו במלותיו.

[10] נ״א: מלך צבי יושב במנינם. המלה „יושב״ נמצאת בשתי הנוסחאות, ובנוסח שלנו היא נגד המשקל והשמטתיה.

B

THE LETTERS OF THE ספר הלליה

(ד) I

טופס כתב שבא אלי מחכמי הישיבה המהוללה שבקהל קדוש וויניציאה יע״א חכם לבב מבני חובב ובחכמה ומדע ככלכל ודרדע ה״ה מעלת מורינו הרב כמוהר״ר מהללאל הלליה מציויטה נובה יהי אלקיו עמו אמן סלה.

לא טובה[1] השמועה אשר באזנינו שמענו ולא נאמין כי יסופר יען כי תמיה לן מילתא טובא מה גם כי ק״ו[2] דחזקת חבר דאין יוצא מתחת ידו דבר בלתי מתוקן ק״ו בנו של ק״ו שישמע בערי יהודים דאיכא צורבא מרבנן ודעימיה דלא קיימי מקמי ס״ת אשר האזכרות שבו נכתבו בקדושה ובטהרה ואדרבא נהיגי ביה זילותא ח״ו קלא שלא פסיק הוא דמעכת׳ הוא אשר עשה כדברים האלה בס״ת אשר עלתה הסכמת רוב רבני ישיבתנו להכשירו וראה ראינו שלשה ועשרים רבנים פוסקים כמו כן להכשירו ולכן אין דעתנו סובלת שיהיו הדברים כאשר הוגד לנו דאם כל כת וכת יעמדו בשמועתן לא משום זה יתירו הרצועה עד כדי בזיון וקצף והלא יש בינינו מוכיח באיזה ראיות לפוסלו בסברתו עכ״ז כמו זר נחשב בעינינו לשמוע דברים אלה כי לא תהא כזאת בישראל אך כשם שקבלו שכר על דרישת הדין עד מקום שידם מגעת כן יקבלו שכר על הפרישה ולקבל סברת רובא דמינכר דהתורה אמרה אחרי רבים להטות למען ה׳ ותורתו אם עשה איזה מעשה כזה יתקן את המעוות ולא יתן מכשול בזה לפני העברים עם קדוש לחלל ש״ש וכבוד תורתו הקדושה כי אם שמע נשמע רמז ורמיזה משום דבר כזה הנה אנחנו כלנו יחד חיים מרגישים לעשות איזה אות לתוכחת מגולה במחנה העברים ידענו כי איש נבון וחכם הוא ויודע דעת כוונת עליון ויקבל האמת ממי שאמרה ויבא טוב.

נאם בני הישיבה הכללית החותמים בויניציאה י״ד תמוז שנת ה׳ תכ״ג, אני יעקב בכמ״ר משה הלוי זלה״ה אחד מזעירי צעירי חברי הישיבה חותם בשמי ובשם מ״ע כל חכמיה ורבניה שמרם השומר לעולם א״ס.

(ה) II

וזאת היא התשובה אשר שלחתי אל מע׳ חכמי הישיבה דלעיל על האגרת הנ״ל. צדיקים וישרים מאירים לארץ ולדרים כלם אהובים כלם גבורים במלחמתה של תורה ה״ה החכמים השלמים מהישיבה המפוארה שבק״ק ויניציאה הבירה ה׳ עליהם יחיו דשנים ורעננים יהיו א״ס.

---

[1] בכ״י רשום כאן בשולי הגליון: „הכתב הזה אין רצוני שיהי׳ נכלל בחבור זה״. בכ״י השני (D. 194) חסר המכתב הזה וכמו כן כתב־התשובה שהמחבר שלח עליו.

[2] ק״ו=קל וחומר.

אמרות טהורות צרופות ככסף ומובחנות כזהב באגרת מעכ״ת הבאה אלי בשבוע שעברה נכנסו באזני ובהן ששתי כעל כל הון בראותי שחבה יתרה נודעת לי אצל מעכ״ת כי אעפ״י שהוגד הוגד לפני מזבחכם הטהור שאני נוהג זילותא ח״ו בס״ת אשר עלתה בו הסכמת רוב רבני הישיבה להכשירו אין דעתכם סובלת שיהיו הדברים כאשר הוגד לכם תשובות חן חן למעכ״ת וכשם שדנתוני לכף זכות כך תקבלו שכר כפול ומכופל מן השמים ויברך אתכם כאשר דבר לכם ברכת הדיוט כמוני אל תהי קלה בעיניכם ואמנם אעפ״י כן יען דק״ו מפום רבנן קשישי דכל הנחשד בדבר שאין בו צריך להודיעו לכן אמרתי הנה באתי במגלת ספר כתוב עלי להודיע למעכ״ת באמת ובמשפט ובצדקה כי אעפ״י שלפי קוצר שכלי אין ראוי לקרות בספר הנ״ל בצבור ולברך עליו ואעפ״י שקצת מבני קהלתנו לא אבו לשמוע דברי לא מנעתי שלא יקראו בו ומעולם לא דברתי ולא עלתה על לבי לזלזל בכבוד ס״ת הנ״ל ח״ו כי אדרבא בכל עת שהוציאו אותו מן הארון עד שהניחוהו בדוכן לקרות בו בצבור קמתי ואתעודד לכבדו נגד זקני עמי ובכל עת שהייתי קרוב אליו ואקוד ואשתחוה לפניו אלא האמת כן הוא כי אחר שהגביהו אותו להראות הכתב לעם והניחוהו בדוכן לקרות בו הלכתי מבית הכנסת כדי שלא לשמוע הברכות שמברכין עליו בקריאתו כי יען שלפי סברתי ולפי סברת חכמים גדולים שהסכימו עמי שכל המברך בספר זה הויא ברכה לבטלה משום שנמצאו בב״ה שלנו עשרים ספרים אחרים כשרים ותמימים כתורת ה׳ תמימה ורוצים לקרות ולברך בספר זה לכתחילה וגם משום שיש לי פסקים מחכמים קדושים אשר בארץ המה ובפרט ממעלת הגאון כמהר״ר שמחה לוצאטו זצוק״ל ריש מתיבתא מהישיבה המהוללה שבק״ק שלכם וראו כל דברי המכשירים בנדון זה וסתרו כל הבנין שבנו עליו בראיות ברורות עפ״י השגותי שהשגתי עליהם ואעפ״י שצעיר[1] אנכי בין רבנים גדולים ואעפ״י שהייתי יחיד אצל רבים נטו לדעתי והחמירו כמוני וכבר ידעו מעכ״ת חומר הזכרת שם שמים לבטלה ואפילו בברכה שאינה צריכה ידעתי רבותי כי אנשי מופת המה להצמיח האמת בקרב הארץ ואני ב״ה אצפה אוחילה לאלקי ישעי כי בעגלא ובזמן קריב אבא שמה כדי להדפיס ב׳ חיבורים[2] שחברתי ואז פה אל פה נדבר ויחדו נמתיק סוד בנידון בע״ה ומובטח אני כשיראו מעכ״ת כל הראיות שיש לי בנידון זה וכל אשר נגזר עליו מרישיה לסיפיה היותם אוהבי האמת והצדק בחכמתכם הרמתה כי רבה היא יעשו ויגזרו אומר שהקולות יחדלון מעל ס״ת והברת הריבות לא תהיה עוד בארצנו ויעשו שהאמת והשלום ידגו לרוב בקרב הארץ, ישמעני אלקי ואצא מלפני מעכ״ת כצאת העבדים ואחוי קידה ודלא כלנא בתפלתי לפני אבינו שבשמים יגדיל ויאדיר תורתכם ויאריך בטוב ימיכם כנפשכם וכנפש דורש שלומכם וטובתכם.

הצעיר מהללאל הלליה מציויטה נובה.

---

[1] את הבטוי צעיר צריך להבין כאן במובן של עניוות ולא של שנים. זה היה בשנת תכ״ג והמחבר היה אז למעלה מששים שנה לערך.

[2] אלה המה חבוריו הנזכרים לעיל „קדש הלולים״ ו„הלל גמור״. וכתבי היד של שני הספרים האלה נמצאים בספריה של ביהמ״ד לרבנים בניוורק.

III (ל)

וזאת כתבתי כיון ששמעתי דרשות בבתי כנסיות ובתי מדרשות על סיום מסכתא קמא.

ה' אלקים פתח לי אזן לשמוע בלמודים מאלו המשכילים ונבונים חדושים נדרשים נכוחים למבין וישרים למוצאי דעת ולכל בני ישראל המה אור במושבותם בבתי כנסיות ובבתי מדרשות אשרי לאזן שכך שמעה וזכאה חולקיה דבר נש הבא לשמוע את דבר ה' אשר היה בפיהם כי לוית חן הם לעומדים צפופים מבקר לערב לחזות בנועם ה' ולבקר בהיכלו כן נזכה אנחנו עמו וצאן מרעיתו לעמוד ולשרת לעסוק בתורה לשמה בתודה וקול זמרה להכין אותה ולסעדה כל הימים כתבתי זאת זכרון בספר לכבוד ה' ולכבוד תורתנו הקדושה והראשה הצעיר מהללאל הלליה מציויטה נובה.

IV (מ"ב)

וזאת כתבתי בעת שנקבעה חברת שומרים לבקר בק"ק שלנו ובכל יום ויום ברוך ה' הולכת ומתגדלת בעיון ובמעשה.

הנה נא ערכתי פי דברה לשוני בחכי שירים ותשבחות לאל אלקי הרוחות אשר פתח לי אזן לשמוע בלמודים מאלו הבחורים אשר לבוקר שומרים להגיד בב"ה סליחות ותחנונים אגרא דבי הלולא מילי דזכותא דרבים דאיהו עדיף אשר עשו חבורה אחת תחת חבורה[1] אינם פחותים מעשרה כדי להגדיל תורה למרבה המשרה באגרא דשמעתתא סברא לעסוק בה יומם ולילה יהי רצון לפני נורא עלילה יצילם מכל צרה ויתן להם שכר טוב במהרה כי לפום צערא אגרא האמנם רע עלי המעשה מאלו קטני אמונה אשר על חברה זו כתבו שטנה וברחובות קריה בלשון רמיה דברו הוות על שומרי מצוות באמרם אל תאמינו בריע[2] מאלו הפרושים אשר בעיני האנשים מראים עצמם קדושים וככהנים אשר אל ה' נגשים אדרבא מעשיהם נמאסים ונבאשים עליהם כתוב ויקו לעשות ענבים ויעש באשים זה דרכם כסל למו כסוררים לרע טוב ולטוב רע אומרים כי משרש נחש שרשם לתת מום בקדושים ולהביא על צדיק אשם, אוי להם ואוי לנפשם גמולם ישוב בראשם והעד כי קנינם ורכושם הלך זעיר שם זעיר שם והחברה רחבה ברב עם עם איש שיבה, אומיה היא ושוררת[3] לכבוד ולתפארת יפה כתרצה נאוה כירושלים לתושיה כפלים ובאמרות טהורות בראש אשמורות כלם שופכים לבם כמים נכח פני אביהם שבשמים המיוחד בכל יום פעמים והמהולל בפי עמו למען קדושת שמו ינשאם כל ימי עולם יהי שלום בחילם שלוה בארמנותם יגדיל תורתם ישמע שועתם ירצה עבודתם ויפקד לבקרים שמורים לכל בני ישראל לדורותם כתבתי זאת זכרון בספרי לעודד לבי ובשרי בעבודת יוצרי ולהזכיר לכל איש ישראל חברי משכים בבקר מתגבר כארי לעבוד בוראו כאברהם העברי אנא קטינא וזעירי מכל בני עירי מהללאל הלליה מציויטה נובה.

[1] ר"ל חברות חברות במקום הכיוון שבכתוב.

[2] מיכה ז', ה'.

[3] במקום הומיה ושוררת, משלי ז', י"א.

V (ז)

וזאת כתבתי כששמעתי שעיר מנטובה נלקחה מהאשכנזים והיהודים שבתוכה עברו צרות רבות ביום תשעה באת בשנת ה' שפ"ט ליצירה[1] ויען כי ביום חרבן בית הבחירה אחינו שבמנטובה הבירה נסעו מיטבתה[2] הגדגודה בני יעקן מוסרה, וחמת אל בם סערה, בעברה וזעם וצרה, כתבתי זאת זכרון בספרא, שים נא ידך ביריעתי וקום קרא, כי ממנה תדע משפט יום ה' הגדול והנורא.

יום צרה ותוכחה היום הזה כי באה על משבר העיר מנטובה, כלילת יופי צבי היא לכל הארצות לתורה ולתעודה היא היתה אם כל חי שמה ישבו כסאות למשפט האלקים האדירים מימי קדמתה ועתה הושתה בתה מצרות צרורות שנעשו זו לזו עוד זה מדבר שר צבא מהאשכנזים ידבר עמים תחתיו וחיילים יגבר לשבר ארזים עד ירצוהו ברצי כסף וזה בא אחריו בפה פתוח לרוחה אומרה הב הב בוזו כסף הבו זהב ירחיק טובם ישלח בך חרון אפו עברה וזעם וצרה על העיר המהוללה בחיל יללה היא העיר הגדולה של חכמים ושל סופרים רבתי עם ישבה בדד אשר מדי שבת בשבתו לא ישביתו אך בזאת יאתו בפרוע פרעות[3] מסים וארנוניות ואין לאל ידם לסתום פיות עד נעשית כמצולה[4] שאין בה דגים ויושבים כחגבים נכאבים נעשו חורים מנכסיהם ויהי הם מריקים את שקיהם עד כלות פרוטה ויתר פליטה ובכל זה לא הונח להם עד כי אח"כ כלה גרש גרשו אותם מחוץ לעירם בעירום ובחוסר כל נרפים הם נרפים ומהאויבים נרדפים והנה החמס קם למטה רשע בלתי ראות ישע האמנם על זאת יתפלל כל חסיד למלך במשפט יעמיד ארץ ומשגב לעתות בצרה ישים לאחינו פאר תחת אפר וישיב שבותם כבראשונה בחמלה וחנינה ובשקט ושאנן ישבו לבטח על אדמתם ישמחם מיגונם וימלא חסרונם ולרשעים שצררו אותם חנם ישיב עליהם אונם[5] אמן כן יהי רצון אני מהללאל הלליה מציויטה נובה.

VI (כ"ג)

וזאת כתבתי אל מ"ע ממוני ק"ק רומא שיהיו מליצים בעדנו לבטל גזרה אחת מאת השר יר"ה: הרים הגבוהים, סלעים מחסה לאביון בצרה לו, נדיבי עמים ה"ה ממוני ק"ק רומא עומדים בפרץ משכילים אל דל ביום רעה ימלטם ה' מכל צרה וצוקה אכי"ר.

יחד נכמרו ויתלחשו עשתונות לבי מקול ענות רעיונות בסעיפים וחזיונות קול פחדים באזנינו הנשמעים אצלנו דמבעי למיחש להו טובא בחמירא סכנתא כי עתה מחדש אחרי כי באה קהלתנו על משבר שבר גדול ואפס עצור ועזוב החמס קם

---

[1] ע' הערה 12 לעיל בהקדמה.

[2] מיטבתא=מןטובה (עדה"ר דברים י', ז').

[3] מלשון שלם ופרעון במקום המכוון בכתוב.

[4] במקום „מצודה" כלשון הכתוב (קהלת ט, י"ב); ברכות ט.

[5] בכ"י כתוב כאן ונמחק ביד המחבר: „וברעתם יצמיתם ירדוף באף וישמידם".

בעצה יעוצה עלינו רעה מכל סוחריה כלם נקבצו יחדיו בחבור עצבים פרים ורבים להתעולל עלילות[1] שמה[2] במקומכם יפטירו בשפה יניעו ראש[3] לאסר אסר על נפשנו לבלתי נוכל עוד לקנות ולמכור סחורה רק לעשות מלאכת הסטראצייארולו[4] וישן מפני חדש תוציא כלם מחזיקים למצוא תואנות לאלפים ולרבבות על היהודים כדי להוציא מחשבתם למעשה ולמען הרבות משא ומריבה כיס אחד היה לכלם ודמים בדמים נגעו להזיקנו ולכלותינו עד שתכלה ממנו פרוטה מן הכיס ויהי בשמעי הדברים האלה פחד קראתני ורעדה ונפשי היה למים כי המה יורדים עמנו עד לחיינו ורבים בני שוממה מבני עלייה ואין להם על מה שיסמוכו רק ללכת ממקום למקום ומעיר לעיר במשא כבד על שכמם לכן אחינו המסובלים במצוות אליכם המצוה הזאת להיות לנו מגן בעדנו ולהשתדל כיד ה׳ הטובה עליכם לעשות גדר לפרצה הזאת ובין כך אצפה תשובתכם הרמתה[5] מה נעשה בדיננו זה ובשכר זה ירחמכם ה׳ אלקי ישראל אמן עבד נרצע לעבודתכם הצעיר מהללאל הלליה מציויטה נובה.

VII (ל״ד)

חאת כתבתי לעיר רומא לאוהבי[1] שיהיה מליץ אצל השר בדבר מצוה, שלחיך פרדס רימונים נותן ליעף כח ועצמה מרבה לאין אונים שלום.

ראיתי הליכותיך דרך אמונה בחרת להיותך עוזר במקום שיש קדושה בזכותיו דרבים דאיהו עדיף נבואה למשכנותיו נשתחווה להדום רגליו לאמר עזרונו עזרונו כי ידענו את מוצאו ואת מובאו היותו מבני עלייה אהוב למעלה ונחמד בעיני הבריות מוצא חן ושכל טוב בעיני אלקים ואדם אשריו ואשרי חלקו כי כן יודע לאדוני איך אנחנו צעירי הצאן מקוים בעזרתו יבוא טוב ויקבל טוב מטוב הואיל כי קצר המצע מהשתרע וכאשר יוכל מעכ״ת לשמוע מפי המשכיל כה״ר שלמה חיים[2] יצ״ו דברים כהוייתן ישמע מפיו האמת ואמתו והכל תלוי למצוא איש יראו ה׳ קרוב למע׳ השר ירה״ אשר דבריו יהיו נשמעים אצלו ימהר יחישה אדוני ואל מי מקדושים אפנה אלא אליך אדון גבר הוקם על יהיה בעזרתו להיות עליך המלאכה לגמור[3] כי נורא הוא כי אין המצוה נקראת אלא על שם הגומרה ומגלגלין זכות על ידי זכאי ועינינו לך תלויות עד שתחננו כאשר קותה נפשנו וגם ה׳ יתן הטוב לאדוני לו ולזרעו עד עולם וישאיר אחריו ברכה אכי״ר משתחוה מרחוק מהללאל הלליה מציויטה נובה.

VI [1] בכ״י נמצאות כאן המלים האלו מחוקות ע״י קו: „ברשע במשלחת מלאכי רעים״.

[2] בכ״י כתובה כאן ומחוקה המלה: „רומא״.

[3] בכ״י כתוב כאן ומחוק: „מע׳ השר יר״ה״.

[4] Stracciarolo ר״ל רוכל המחזיר במשא של סמרטוטים וסחבות בכפרים ובשאר ישובים.

[5] במקום ותשובתו הרמתה שמואל א׳ ב׳ י״א.

VII [1] מוסב כנראה על ר׳ יצחק מקאוי הנ״ל; ע׳ כתב י״ב, י״ג.

[2] אולי זה שלמה חיים בן ישעיהו ניצה.

[3] מן הדברים האלה אפשר אולי לדון שזהו המשך ההשתדלות בדבר הגזרה הנזכרה בכתב VI.

VIII (מ"ו)

טופס כתב שבא מממוני ק"ק ויניציאה לק"ק שלנו סגנים קצינים נגידים אשר ה' קורא השרידים העומדים על הפקידים ראשונה לכל דבר שבקדושה עומדים והיו לאחדים על התורה ועל העבודה, שוקדים ומתמידים מפוארים יקרים ומכובדים ה"ה מע' ממוני פרנסי הקהלות הקדושות אשר באנקונה יהי הודם לנצח אכי"ר.

גשם נדבות צדקתם ומטר עוז טובתם וחסדם לא נתך ארץ מחנה פדיון השבויים לקרא להם דרור זה ימים ושנים ולא שמענו ולא ראינו היותם אלה כי לא לעזר ולא להועיל כבראשונה ומקדמת דנא אדרבה כל עובר ושב דרך שם[1] לצרך מצוה זו יבואו ויגידו אלינו כי זה דרכם חסד למו לאמר להם כל היום הנה אנחנו שולחים מתן לוויניציאה ליד הפרנסים המופקדים על המצוה הזאת[2] כדי שמה[3] ושמה תמצאו כל ספוקיכם ואין אנו רואים את כל מאומה[4] ואלולי חדשים ·מקרוב באו גם עתה החרשנו כאשר היה לנו דומיה תחלה[5] אבל מה נעשה כי באו בנים עד משבר וכח אין ללידה וזה כי כת אחת של שבויים יש באי מלט"ה מספר ר"ך אשר קצבנו בסך פדיונם מאתים ריא"לי לא' כאשר עולה סך כלם ארבעת אלפים ושמונה מאות ריא"לי ונקו לצדקה והנה צעקה כי אין קומץ מחנותינו משביע לצורך סך עצום ורב כמה שנאמר[6] אם לא יבא עזרתה לנו מהקהלות הקדושות אשר באיטאליה יצ"ו ובפרט ממחנה קדושתם כאשר הרבו מאד מהר תתן פעמים רבות בידם הרחבה ורוחם רוח נדיבה אשר עזרה בצרות נמצא מאד אשר אותיות אלה יעלו לרצון לפני הדרת יקרת כבודם למען ה' יזכרו ישובו אל לבם כי מצוה כזו לעולם יהא שמה רבה וכי בארץ הלא אל נדיביה ושועיה כושל כוח הסבל מרב עולים ושמץ כח מסים וארנוניות ובוחן כליות הוא יודע אך אנחנו מוסיפים כח בגבורה יכלתנו להשכיל להטיב עם אלו הדלים ואומללים ואחרים כהנה וכהנה המפוזרים והמפורדים במקומות אחרים זעיר שם לכן קראו וכן תעשו בתוספת טובה וברכה מרובה ואל ימעטו לפניכם תלאות אחיכם ומהר יקראום רחמי צדקתכם כאשר קוינו דברינו אלה יעשו פרי תנופה כי ידענו היותנו מדברים על אוזן שומעת ועם כל חכמי לב אשר יותר ממה שכתוב כאן הם משכילים ומבינים וחפצי חסד הם יותר ממה שאנו מבקשים מהם ובצפיותינו נצפה לתשובתם הרמתה[7] ובין כך נוחילה לאל נחלה פניו יתן הטוב לטובים וימלא משאלות לבנו לטובה והוא ישלח ברכה הרוחה והצלחה בכל מעשה ידיהם קדש ויצו אתכם החיים והשלום כנפשכם וכנפש דורשי שלומכם וטובתכם כל הימים.

---

[1] דרך שם=אנקונה.
[2] פדיון שבויים.
[3] שמה=לויניציאה.
[4] ר"ל ואין אנו מקבלים שום כספים ממכם.
[5] במקום תהלה.
[6] כמה שנאמר=כנ"ל.
[7] עדה"כ ותשובתו הרמתה, ע' הערה 5 לכתב VI.

IX (מ"ה)

וזאת התשובה אשר כתבתי בשם ממוני ק"ק שלנו לממוני ק"ק ויניציאה יע"א ששים ושמחים לעשות רצון קונם בגופם בנפשם ובממונם הנה הנם מעלת ממוני ופרנסי פדיון שבויים אשר בויניציאה ה' עליהם יחיו יהיו דשנים ורעננים אמן סלה.

קול מהיכל מעכ"ת שמענו באגרת שלכם הבאה אלינו מכרזת ואומרת כי גשם נדבות צדקותינו לא נתן ארץ מחנה פדיון שבויים ולא ראיתם היותנו להם לא לעזר ולא להועיל ושהעוברים ושבים בעירנו אמרו למעכ"ת כי זה דרכנו חסד למו לאמר להם כל היום הנה אנחנו שולחים מתן בסתר לויניציאה ואינכם רואים כל מאומה ליהוא ידוע למעכ"ת כי בשתי שנים שעברו באו פה אנשים שלמים וכן רבים לשאל עזר וסיוע על צרת אחינו שבפולוניא ומהטוב אשר הטיב ה' לנו הטבנו להם וכל או"א מההקהלות הקדושות מלבד אשר נמצא בקופות פדיון שבויים עוד התנדבו איש כמתנת ידו לחבוש לנשברי לב ולקרוא לשבויים דרור גם שליח א' ממדינת פולוניה פה עמנו עומד היום שואל ודורש טוב לעמו השבויים שם וגם ממנו לא מנענו טוב כמסת נדבת ידינו והאמת אתנו כי גם כל עובר ושב שבא בעירנו לצורך מצוה לא שלחנו אותו ריקם וכפי אשר השיגה ידינו החזקנו ידים רפות בסבר פנים יפות וכבר ידעי' מעכ"ת כי רובן של אלו חשודי בדיתא נינהו אשר למדו לשונם דבר שקר ומרמות כל היום יהגו כדי לבקש על המחיה ועל הקלקלה[1] ואל אלקים הוא יודע כי מעולם רצוננו וכוונתינו היתה להחיות רוח שפלים ולב נדכאים אבל מה נעשה לאלה היום כי בעירנו זאת אין בקופה של פדיון שבויים כלום וממנה אפס כסף בעבור שבויי פולוניה הנזכרים ובעירנו יום יום יביע אומר מרירות אזניים דחסורי מחסריה להו והכי קתני רבנן עניי עירך קודמין גם יום יום יעמוס לנו משא כבד ממעיקים מחוץ אשר מדי חדש בחדשו מתחדשין ובאין תמידין כסדרם ומוספין שלא כהלכתן ולכן על השבויים אשר באי מלט"ה אנחנו לא נדע מה נעשה אין לנו אלא להתפלל בעדם לה' כי ממקום אחר ישלח עזרו ויגאלם מיד צר ויוציאם מעבדות לחירות ולמעכ"ת מיהב יהיב שלמא וחינא וחיסדא ורחמין ומזיני רווחין כל הימים אמן נכון לעשות רצונכם ועבודתכם לעבוד משיב מפני הכבוד הצעיר מהללאל הלליה מציויטה נובה כותב וחותם פה אנקונה בשם מע' ממוני הק"ק יע"א.

X (ט"ז)

וזאת כתבתי אל דודי המשכיל כמ"ר יצחק כהן לסיניגאלייא כיון שברח מאנקונא מפני אויביו, רישא דדהבא, שמח בייסורין ומקבלן באהבה שלום.

תכון תפילתי קטרת לפניך דודי יקירי כי בלבי צפנתי מרירותיך כי גלית מארצך וממולדתך מקום אשר דברך נצב בשמים ראש מר צרור חמס[1] מאסת

IX [1] במקום ועל הכלכלה.

X [1] צרור (הכסף), ר"ל שנאת גזל.

הלוך הלכת אל נפשך ושחק צדיק תמים עלה קולו קם שונים[2] בשנוי מקום מאן סני גאלייא[3] קדם אלקך די אנת פלח הוא יושיעך מעלה מרגלים אש כלות מרורות למו[4] אשר יפטירו בשפה יניעו ראש ובלבם ישימו ארבם ענ"ו ימו ענוי ראש[5] יושב בשמים ישחק הוא ידבר אלימו באפו ויהיו העליונים למטה ותחתונים למעלה אין לנו אלא להצדיק דין שמים כי אין אדם צדיק בארץ וטוב לגבר כי ישא עול בנעוריו[6] לכן החזק במוסר אל תרף ידיך מדברי תורה והיה ראשיתך מצער ואחריתך ישגא מאד ויאמר לאסורים צאו ואז ימלא ישחק[7] פינו ולשוננו רנה ואתה תגיל בה' תשיש בישועתו, בר אחתיה כבן יקיר לו דורש שלומו וטובתו מהללאל הלליה מציויטה נובה.

XI (ל"ה)

וזאת כתבתי אל אהובי בסיניגאלייא שהיה עצור בחצר המטרה לתשובת אגרתו אשר שלח אלי שאלך בשבילו אצל השר, צרו"ר המו"ר דודי לי[1] ואני לו בכל חילי תמיד כחותם על לבי ולעולם הוא יושב ממולי שלום.

המו מעי על דודי אשר שלח ידו מן החור[2] אלי כי אהבת עולם אהבתיהו כל שכן בפעם הזאת אשר ראיתי את עניו ידעתי בצרות נפשו לא עברתי ממצותיך ולא שכחתי ולעשות רצונך חפצתי כי תכף ומיד שקבלתי אגרתך אזרתי מתני ובכל כוחי ואוני הלכתי עם שנים מליצים מטובי העיר לפני אדון העיר להוציא ממסגר נפשך ולהודות את שמך כי זך וישר אתה ועולה לא נמצאה בשפתיך למען יעיר עליך ושלם נות צדקך ובכל זאת לא שב אפו ועוד ידו נטויה נגדך אעפ"כ לא התרפיתי ביום צרה ולא צר רוחי כי שלחתי עוד שרים רבים ונכבדים אצלו וברוך ה' מצאתי חן בעיניו כי גזר אומר שתצא לחפשי חנם באופן שלא תאונה אליך רעה ונגע לא יקרב באהלך ואת מקומך אל תנח[3] לצוות עלי צו לצו כצו המלך אל עבדיו דבר כי שומע עבדך בלב שלם ובנפש חפצה ולמי כל חמדת לבי הלוא לך אדוני כל הימים אחלה פני אל ויחנך וישא פניו אליך וישם לך שלום אכי"ר לעבוד עבודתך ולשמור כל מצוותיך הצעיר מהללאל הלליה מציויטה נובה.

X [2] במקום (וישחק=ויצחק) כלו קמשונים, משלי כ"ד, ל"א.
[3] במקום העיר סיניגאלייא.
[4] במקום אשכלות מרורות למו, דברים ל"ב, ל"ב.
[5] במקום ענבימו ענבי ראש, דברים שם.
[6] מכאן שר' יצחק הכהן היה אז צעיר לימים.
[7] ישחק=יצחק.

XI [1] צריך לחשוב בבטחה שזה מוסב על דודו ר' יצחק הכהן שברח מאנקונה לסיניגאלייא מפני אויביו וכנראה שגם שם השיגתו יד השלטון. המחבר אולי אינו מזכיר בפירוש את שם דודו, כדרכו תמיד, כדי שלא לביישו בכתב.
[2] חדוד על הכתוב בשה"ש ה', ה'.
[3] ר"ל אל תעזוב את מנהגך כימי קדם לצוות עלי.

XII (י״ח)

וזאת כתבתי אל החכם כמה״ר יצחק מקאוי לרומא לתשובת אגרתו נר ישראל פטיש החזק איש יודע פשר דבר דבור על אופניו, חסיד ועניו שלם ושלום רב לאוהב תורת ה׳ הגאון כמהר״ר חזקיהו מנוח קורקוס נר״ו ירום הודו והדרו[1] אמן.

נתת שמחה בלבי ולשמך אתן כבוד ושפתי תרנינה בגילה ברינה בשמחה רבה בראותי את כתבך המאושר ואמרתי בלבי אין זה כי אם אהבה וחבה וענוה רבה לזכותי לראות אותיותיך אותיות עליונות ומליצותך[2] הנוראה וגדולה היא אלי וכל עצמותי תאמרנה שירות ותשבחות והודאות למעכ״ת כי הבאתני עד הלום להראותני אמרותיך אמרות טהורות יקרות וחמודות ואל נא תשת עלי חטאת על כי אחרתי לענות לך כי האונס גרם יען כי הגיע(ה) אלי אגרתך בערב י״ט בין השמשות ולא היה (א)לי פנאי להשיב אליך תיכף ומיד כי לא מזילותא ומעט חשיבות הוא כי יקר וגדול אתה בעיני כמלאך האלקים אך האונס הנ״ל גרם כשאמרתי יהי נא חסדך לנחמני באמרותיך תמיד ויבואני רחמיך ואחיה כי כתביך שעשועי ואתפללה אל אל ערבית ושחרית יתן לך חלק טוב כהימן וכלכל ודרדע וכלל כל הברכות תאסוף מראש ועד סוף ויטה לך האלקים כנהר שלום אכי״ר תולעת ולא איש הצעיר מהללאל הלליה מציויטה נובה.

XIII (י״ד)

טופס כתב שבא אלי מעיר רומא מהחכם ר׳ יצחק קאוי הנ״ל בר אוריין דמטמרן ליה גליין יסוד הבנין שלום.

שמעתי את שמעך אדוני וקציני ואותותיך ספיר גזרתם העירו עבר פני ותחי נפשי בקרבי מקום התורה פניך אשר לזאת אתן תודות למעכ״ת ומה גם כי ברוב ענותנותך נתת כבוד לשמי ונשאני ולקרוא אותי נר ישראל כמדומה לאדוני שאני צורבא מרבנן כרבן יוחנן ואני בר ולא אדע ונפשי חסרה מכל מדע ואדוני מלא רוח חכמה ומעלה רמה ואיש בינה ראשו כתם פז בתבונה האמנם גודל ענותנותך תרבני ובדברך הממולאים בפז החשיבות תפקדני ראיתי התנצלות אדוני אל אחור מכתבתי באמת כי היה מעט יגון בלבבי וחכיתי לאדוני בתוחלת ממושכה לראות חקקי גלילי אצבעות אדוני ואמרתי בלבי אולי טרדות המועדות גרמה, עשיתי כאשר צויתני לא עברתי ממצותיך ולא שכחתי מלתת שלמא וחנא מצדק למ״ע הגאון כמהר״ר חזקיה מנוח קורקוס נר״ו והנה הוא מחזיר לאדוני על ידי אלמות שלוחות ובזה אכרע ואקוד לפני אדוני ואקריב לו שלומות עד בלי די כי ייטב

---

[1] קשה להחליט בוודאות אם מכתב זה נכתב לר׳ יצחק מקאוי ברומא או שנשלח אליו בכדי למסרו להרב חזקיה מנוח קורקוס. אולם קרוב לשער שהמכתב נכתב לר׳ יצחק אלא שהשורה להרב קורקוס היא, פרישת „שלום" אליו שנוספה אחרי כן. ע״ד ר׳ יצחק מקאוי ומשפחתו ע׳ פוגלשטיין–ריעגר כרך ב׳, דף 288.

[2] ומְלִיצוּתֶךָ=מליצתך היקרה (הנוראה).

נא בעיני אדוני למלאת את שאלתו לכתוב אל עבדך תמיד למען יגל לבי באותיותיך לראות פני אלקים ובזה אדע כי מצאתי חן בעיניך וישמח לבי וחיתה נפשי בגללך ואני אודה את שמך ואתה תשכון בנוה רטוב וחיית ורבית והיה ברכה בקרב הארץ ערל שפתים משולל הדבור יצחק יצ"ו ב"ר מרדכי מקאוי ז"ל[1].

XIV (י"ט)

וזאת כתבתי למעלת החכם השלם כמהר"ר אליעזר חיים מניצה חותני כשנתן לי את בתו לאשה, עוסק בחכמות רמות ודורש רשומות שלום.

לריח שמניך טובים ידיד חשקי כבודי ומרים ראשי הוספת עלי גילה בראותי חיבתך כי אהבת עולם אהבתני ועל כן משכת לי חסד אמרתי חבלים נפלו לי בנעימים עם איש ישר ותמים נעימים דבריך נעמת לי מאד אהלל שם אלהים המושיב יחידים אשר זכני לכך לשאוב מים קרים נוזלים ממקור מים חיים חיי עולם מי אנכי ומי עבדך כי זכיתי להתחתן במלך מאן מלכי רבנן ואני לא אהיה כאחד מעבדיך ומה אדבר ולפני מי אשא קולי לפני איש חכם ונבון מעוטר בכתר השלמות ואדוני כמלאך האלהים רם ונשא וגבה מאד יושב אהלים אהלי תושיה מי ימלל גבורות אדוני ישמיע קול תהלתו האל ישגיח עליך ממכון שבתו ואחריתך ישגא מאד חתן התמני עבד לאדוני אני מהללאל הלליה מציויטה נובה.

XV (מ"א)

עוד זאת כתבתי אל מעלת החכם השלם כמהר"ר אליעזר חיים מניצה חותני הנ"ל כיון שיצאתי מאנקונא והלכתי אל בית אבי בציויטה נובה.

פום ממלל רברבן גדול מרבן שלום רב לאדוני חותני בכל כחי ואוני.

למען לא אחטא לך אלופי ומיודעי מאשר צֽויתי שרצונך לידע את שלום מצבי אגידה ואדברה לאדוני ואשירה שירת דודים בקהל קדושים ובקהל חסידים לאלקים מושיב יחידים אשר הגיעני אל בית אדוני אבי בנשף בערב יום שני שלם בגופי ושלם בממוני הגם כי לדידי לא מסתברא האי מילתא במקום אשר הדרים בו עיניהם ישיתו לנטות בארץ הכ'נ'ע'ני[1] ארעא דלא מיתבא דעתאי מיניה היותו מקום פנוי אשר לא שמעתתא סברא וגם דנפישי אחי ומרחמי עכ"ז הנה אני כגבר אין איל וכאיל תערוג על אפיקי מים אין מים אלא תורה באמרי כל היום מתי אבוא ואראה פני אדו' אל המקום אשר היה שם אהלי בתחלה אל המנוחה ואל הנחלה אשר נפשי חשקה בתורה ללמוד וללמד לשמור ולעשות דברי חכמים וחדודם זאת היתה לי כי נכסוף נכספתי לבית אבי עם נקודות הכסף[2] בעבור כי לא מצא עזר כנגדו

XIII [1] בכ"י D. 194 רשום כאן: „רומא אהיה כטל לחדש שבט שנת תב"א תחינתי לפניך סדר וחי לעולם. (תבא=ת"ג=1643).

XV [1] הכנעני=ר"ל הסוחרים שעליהם שייך לאמר „שלם בממון" אבל לא על כותב המכתב.

[2] עדה"כ שה"ש א', י"א ור"ל בית אביו שיש שם כסף ומזון.

היותו יחיד בדירתו לבקש לו מנוח לכלכל את שיבתו לאסוף ולכנוס ריוח כדי להביא טרף לביתו כדרך גבר ב׳ע׳ל׳מ׳א׳[3] וכהלכת גוברין יהוראין דזנין ומפרנסין ית נשיהון ובניהון בקושטא ובעזרת צורי וגואלי בכל כחי ומילי אבקש לבוא אל אדוני בעגלא ובזמן קריב ואגילה ואשמחה בך כך בתורתך אשים קנצי למלין בפקודת שלום רב למעכ״ת עם כל בני ביתו המבורכים ואחלה לאל חיי יזכני ויברכני וימהר ויחיש עזרו מקודש אלי להיות אצלו תמיד כי נכספה וגם כלתה נפשי לחצרות אדוני לבי ובשרי ירננו אל אל חי בתפלה ובתחנה יכתבו בספר חיים ויחדש עלינו שנה טובה לעבוד עבודתו באמת ובאהבה אכי״ר חתנך החפץ בך בכל מבקשך אשר נפשו קשורה בנפשך מהללאל הלליה מציויטה נובה.

XVI (מ)

וזאת כתבתי אל מעלת החכם השלם חותני כמהור״ר אליעזר חיים מניצה כיון שהלך בלוגו, שואל כענין ומשיב כהלכה בתורתו ערוכה שלום.

סבוני גם סבבוני מורשי לבבי המה הפשיטוני מששון ושמחה שחבר הקיני[1] נפרד ממני כי שקדתי והייתי כצפור בודד על גג ונשארתי כמצודה שאין בה דגן[2] מה מר ומה נמהר העת יאמר אחרי העדר מעכ״ת מעלי אוכל לאמר אללי כי פנה דודי פנה הדרי גבור כארי לעשות רצון אביו שבשמים ולשים מדבר כאגם מים אין מים אלא תורה ערוכה בכל ושמורה מסיר שפה לנאמנים וטעם זקנים בדבר שפתיו מישרים מאירים ומזהירים לארץ ולדרים כלם אהובים כלם ברורים ובכלהו לימודיו ומדרש והגדא ועל דא ודא הוקם כמטרה לבי אף רוחי בקרבי כי אזכרה מקדם פלאי הדרת יפעתו חכמתו ובינתו לעיני כל העמים בדבריו הנעימים יחדיו יהיו תמים ממעל לו לאיש כפי מהללו, האמנם מה אדבר ומה אומר אל צדיק כתמר והדבר אין בי רק לומר למעכ״ת שובי שובי כי אמרתי שבת״ך ומשענתך המה ינחמוני לראות פניו כתרשי״ש ממולאים כראות פני אלקים כי פה אל פה אדבר בו ומראה ולא בחידות כירחי קדם וכשנים קדמוניות ביום שבתנו יחד בנוה שלום לשמוע נפך ספיר ויהלום ואשא תפילה לאל חיי ישביעהו שובע שמחות וינהלו על מי מנוחות בשובי אל ביתו לחיים ולשלום אמן, חתנך כבן יקיר לו מהללאל הלליה מציויטה נובה.

XVII (נ״ו)

וזאת שלחתי לעיר לוגו אל מעלת החכם השלם כמהור״ר אליעזר חיים מניצה חותני בלכתי לדור בסיניגאלייא להיות מלמד לתלמידים, לרישא דנהר דיעה ופום בי דתא[1] ודמתא מחסיא תחת צל תורתו שלום.

XV [3] במקום „בעלמה״ ככתוב משלי ל׳, י״ט.

XVI [1] חבר הקיני, ר״ל חותני עדה״כ חבר הקיני חותן משה, שופטים ד׳, י״א.

[2] ברכות ט׳; ע׳ הערה 4 לכתב VI.

XVII [1] נהרדעא ופומבדיתא.

אחרי גלותי היתה לי עד הנה[2] ותאוה נמרצת וחשק גדול לחנות ולהגיד לאדוני את שפל מצבי ודאגות לבבי כי רבו כמו רבו מפני חמת זמן המעיק והמציק אשר הציק לי בכל שעורי ובלה בשרי ועורי וכלה כחי וראשית אוני ודרך קשתו כאויב נגדי עד ששמני שומם ומשתומם על המראה כי אחרי אשר השביעני ממרורים וטלטלני טלטלה גבר והתעה אותי מבית אבי ומארץ מולדתי ולשלום אל עבדך לא קרא לגור בארץ הזאת כי עתה נהפכה לי לארץ מצרים באכה צער[3] שחליתי בחולי כבד נגוע מְכה אלקים ומְענה ורבת צררוני בני אצר בלהן וזעון ועקן[4] גם על זה היה דוה לבי כי עוונתי שמֹו אותי בבור ריק ואין בו מים מתוקים והגונים לגויתי כפי שבעי חב"ל נקשים ועקי רבים[5] יש בו כי רעב בארץ ונתפרדה החבילה[6] אשר שם הזהב ותעש הארץ לקְמצים[7] כיושבים באפס דמים ולכן אחרי רואי צרת רבים בלי נחמה וצרתי צרורה על שכמי כמשא כבד לא אוכל שאתו חשבתי מחשבות ותרתי בלבי אף לילות יסרוני כליותי לבוא לפני מעכ"ת לחלות פני הדרת יפעתו תיקר נפשי בעיניו למצוא לה איזה מנוח ומרגוע בעיר ההיא כי גמרתי בעצמי לפשוט אפילו נבלתא בשוקא ושלא להניח עבודה שהיא זרה לי[8] לעבדה ולשמרה ואדני חכם כמלאך האלקים ידע וישכיל לברור לי כפי חק האפשר מלאכה נקייה וקלה מכל מה שאוכל לעשות אבל אותה אבקש שלא לזוז מלימוד התורה להעמיד תלמידים הגונים כפי רצוני ואשים קנצי למלין בנשיקת רצפת ב"ה טב ושש ודר וש"ח אור"ת[9] תורתו אשר זורחת במדרשו של שם ועבד[10] עבדים אהיה לו כל הימים וכבן יכבד אב אצא מלפניו בכפיפת ראשי בכרעי על ברכי ואדברה נא שלו' בך בך בתורתך אכי"ר חתנך אשר מצפה במהרה תשובתך מהללאל הלליה מציויטה נובה.

XVIII (נ"ב)

טופס כתב שקבלתי מאת מע' החבר כמה"ר שלמה ניצה בן מע' החכם כמה"ר ישעיהו ניצה גיסי פלפלא חריפתא שלום.

בטרם כל אעלה ואגידה למעכ"ת טוב מצבי עם כל בני ביתי על קו הבריאות עומדות רגלינו תהלה לאל חי כך יהי בשלם סוכו ומעונתו בציון הגם הלום ראיתי אחרי רואי כי לו דומיה תהלה ולשכלו הזך יען זכר עשות חסד להשקיף ממעון קדשו לבוא בנקרות הצורים להביא את מי בשורת ברכתו מהברכה העליונה אל

---

[2] במקום אחרי בלותי היתה לי עדנה בראשית י"ח, י"ב.

[3] מצרים (צרות) במקום כארץ מצרים באכה צוער (צער), בראשית י"ג, י'.

[4] חדוד על הכתוב דה"י א', א', מ"ב (והמחבר משתמש בשמות האלה במובן צרות ותלאות).

[5] חדוד על חבל נחשים ועקרבים.

[6] במקום „החוילה".

[7] במובן קמצנים במקום כיוון הכתוב (בראשית מ"א, מ"ז).

[8] ר"ל אפילו עבודה שהיא זרה לי.

[9] חדוד על הכתוב ורצפת בד וכו' אסתר א', ט"ז.

[10] חדוד על במדרשו של „שם ועבר".

מעין נרפש ומקור משחת עמו עמל הוא למצוא נישוא ולזמר לשמו כי נעים ולכל תכלה ראיתי קץ ואין קץ לשעור שבחיו ובצלוחית מלאה מים קרים אם תהפך על פיה מחפזם לצאת יעמודו כן אלצוני כליותי מדע תהלותיו אמרו לי סיימתינהו לכלהו שבחי דמרן עד כי כמעט נשתקקתי ולולא כי יראתי פן תאמר בלבך שתיקה כהודאה דמיא והגס לבי בהוראה שוטה כבר החרשתי אכן אמרתי אני גם אויל מחריש כסיל יחשב[1] כי ישמע ויקשב רוחו נושב מעשה חושב בדד ישב ולא ישב ריחו יזל עזיז אהבה עד מקום שידו מגעת ועתה נשיא שמחל על כבודו ומלך שואל בשלומו קול דודי דופק וידי על כפות המנעול איש האלקים דבר ואני לא אנבא זאת היתה לי ואבוא היום אל העין עין הבדולח ואבן השוהם לשאוב בששון ממעיני הישועה שלום כבודו ולחלות פניו לפקדני כי כל דבור אשכול הכופר דודי לי והמתחיל במצוה אומרין לו גמור אשים קנצי למילין עד אשמעה מה יוסף אדוני דבר עמי אחרי התפלה לאל יאריך ימיו וימי כל הגלוים לו וכל בני ביתו נאוה קודש כנפשו יגדיל תורתו ויאדיר אכי"ר ש"ן[2] אשר דמות כסא כבודו כתובה וחתומה על לבי שלמה ניצה, בן החכם השלם כמה"ר ישעיהו ניצה נר"ו.[3]

XIX (נ"ג)

וזאת התשובה אשר שלחתי אליו על אגרתו הזאת פרצידא דתיתי קלא מנורת זהב כלה שלום שלום מרחוק לקרוב יגדל ה' תורתו וירבה שלומו וטובתו ככוכבי השמים לרוב אכי"ר.

היכלי ש"ן מניה שמחוני כשמחת בקצור ובמעשי ידיך ארנן ואקד ואשתחוה לה' ואברך ברוך ה' אשר לא עזב חסדו את החיים ואת המתים אשר יצא חוטר מגזע הגאון כמוהר"ר חותני זקניך זצוק"ל[1] ונצר משרשיו אביך גיסי[2] נר"ו פרח בן ישמח אב ממלא מקום אבותיו כמוך ישמח אביך ואמך וישמח לבי גם אני כן ישמיעני אלקי שמחה וששון ויקר מטוב מצבך עם כל בני ביתך המבורכים ובברכת הדיוט כמוני לכולכם ברוכים תהיו אכי"ר ומה אוסיף לדבר עוד להיות מאריך טרחא אשים קנצי למלין ואדברה שלום רב למע' אביך גיסי נר"ו עם כל בני ביתו ובפרט אל הזקנה המעטירה סבתא בביתא סימנא טבא בביתא זקנתך חמותי תמ"א[3] ואליך נפשי אשא ברנה כבן יקיר לי ומדי דברי בו ברך אברכנו עוד בכל מכל כל ברוך תהיה ארך ימים חיה תחיה אכי"ר כאב את בן ירצה דורש שלומך וטובתך הצעיר מהללאל הלליה מציויטה נובה.

XVIII [1] במקום „לחכם יחשב" כלשון הכתוב.

[2] ש"ן=שלמה ניצה.

XIX [1] ר' אליעזר חיים ניצה.

[2] ר' ישעיהו ניצה.

[3] ר"ת תבורך מנשים (ב)אהל או אולי „תחיה מאה (שנים) אמן".

XX (נ"ד)

טופס כתב אחד ששלח אלי מע' החבר שלמה ניצה הנ"ל נאמן בבריתו וקיים במאמרו כחותם על לבי ולעולם הוא יושב ממולי שלום.

ברוך אתה אדוני שומר הברית והחסד לאוהביו ולתלמידיו ומרבה יהי שמך עליון מבורך מפי עליון ונתנך עליון על כל הארץ אל גנת אדוני רודף הנעימים במחשבתי ירדתי פעמים רבות לראות הפרחה הגפן אהבה והיום הזה ראיתי כי הבשילו אשכלותיה ענבים אשכול הכופר דודי לי ענויך ענוי ראש[1] היות כבודו משגיח בשפלים מביט משמים ארץ אל דך ומשיח הרפיון מוכה הבטלה כמוני ומי יתן קולי קול גביני כרוז[1a] או בשופר הולך וחזק אקרא בגרון אל אחשוך אשלם תודות לך ועתה מה מתוק מדבש אגרותיך ומה עז מארי כי יעלה בדעתי להשיב אמרו לך ולהקריב לפני מזבחך כתב זה כל מום בו פגול לא ירצה אשים קנצי למלין כולנו בריאים תל"א[2] כן יהי בשלם סוכו ומעונתו תמיד מע' א"א נר"ו ומרת הזקנה המעטירה זקנתי מב"ת[3] וכל בני ביתי בכלל ובפרט דורשים שלומו וטובתו ואני אבוא אחריהם ובכפים פרושות אוחילה לאל יאריך ימיו בטוב ושנותיו בנעימים יגדל תורתו ויאדיר אכי"ר תולעת שני[4] שלמה ניצה בן ה"ה הר"ר ישעיהו ניצה נר"ו.

XXI (נ"ה)

וזאת התשובה אשר שלחתי אליו על אגרתו זאת השנית בן חכם ישמח אב וכו'.

שבחי[1] שלמים עלי היום שלמה וגמרתי עליו את ההלל כי שמחתני בפעלך הוספת עלי גילה ורון בראותי אותיותיך ספיר גזרתם ולי מה יקרו ריעיך ואמריך אמרות טהורות יהא רעוא מן קדם מריה דשמיא וארעא ישמיעני בכל עת ובכל שעה בשלומך עם כל אשר אתך בשלום יחדיו ובפרט לאביך נר"ו[2] כפלינן שלמא רבא חבה יתירה אהבתיך ואוהב חתום בלבי כבן לאב הצעיר מהללאל הלליה מציויטה נובה.

XXII (ל"ב)

וזאת כתבתי אל הבחור המשכיל כמ"ר חיים גיסי יצ"ו בן מעלת החכם השלם כמהר"ר חותניו[1] כשהלך בעיר פראג"ה ללמוד תורה. באור פני מלך חיים ורצונו כעב מלקוש שלום.

XX [1] במקום ענבי ראש, דברים ל"ב, ל"ב.

[1a] גביני כרוז, יומא כ', ב'. ע' לעווי, ניי העבר. וואערטערב. כרך א' דף 205.

[2] תהלה לאלהים.

[3] מנשים באהל תבורך.

[4] שני=שלמה ניצה.

XXI [1] במקום זבחי שלמים.

[2] ר' ישעיהו ניצה.

XXII [1] מוסב כנראה על חותנו השני ר' דוד גיינאטוב ולא על ר' אליעזר חיים ניצה (ע' להלן מכתב XXIV).

שמועה טובה תדשן עצם באותיות אשר תבאנה משמיעות תמימות שליחותו היותו שלם בגופו שלם בתורתו ואשר חיים ברצונו שמע לקול האו"ת הראשון ללכת למרחקים בשינוי מקום במקום שאין מכירין אותו כדי למצוא חיי"ם צדקה וכבוד אין כבוד אלא תורה והבא לטהר מסייעין אותו מן השמים דמכריזין ברקיעא עלוהי דבר נש ייזיל בארחין רחיקין אקול"י דמתא מחסייא אקרא דשמעתתא סברא העוסקים בתורה יומם ולילה לא ישבותו לילך מחיל אל חיל במלחמתה של תורה כאשר חשקה נפשו מאד להגדיל תורה ולהאדיר ולעלות במרכבת המשנ"ה[2] ותלמודה כדרך גבר בעלמא[3] אין זה כי אם חכמתא רבתא דמשתכחת ביה לבוא ולדור בעיר גדולה של חכמים ושל סופרים העיר רבתי עם רבתי בעדת ק"ק פראגא ישמרם חי העולמים ובזה אפיל תחנה בחמלה וחנינה לפני שוכן מעונה יתן לך כל משאלות לבך ויבלה בטוב ימיך לא ירפך ולא יעזבך כל ימיך על אדמתך וישמור צאתך ובואך מעתה ועד עולם גיסך אשר חפץ ביקרך מתפלל בשבילך לה' המבורך מהללאל הלליה מציויטה נובה.

XXIII (י"ב)

וזאת כתבתי אל אהובי כנפשי המשכיל ונבון כמה"ר משה"ן חביב כששמעתי שהיה רוצה לילך לקוסטאנטינא העיר המהוללה מהולל שמו ממרחקים דולה מים מבאורות עמוקים שלום.

בלבי צפנתי פנת ספירת דבריו התמימים אלי מאגרתו הרמתה דגברא רבא אמר מילתא בטעמא כי הנה הקול[1] הבל ורעות רוח באמרי כל היום כי הנני בא אצל מעכ"ת ואחר עד עתה לשלם נדרי זאת היתה לי כי טרדות וחרדת הזמן בלתי נאמן[2] סבוני גם הקיפוני ולא נתנני השב רוחי לשלמי נדרי כאשר נדרתי כי מעולם דבורי לא חזר ריקם אמנם יען כי ימעט הבית מהיות משה[3] עצור במלין לא אוכל ופלגי מים תרד עיני בתוך קהל ועדה על הנדוד והפרידה אחרי ששמעתי יציאת צדיק מן המקום עשה רושם בי כי נעשה בשרי חדודים חדודים מכל צדדים בזכרי תלמודו צח ונעים מסיר שפה לנאמנים וטעם זקנים וגם בזכרי אהבת קדומים אשר כל הימים היינו כאחים דבקים לשמור מצוה וחקים ומעולם בידו החזקה השביע נפש שוקקה ולכן כל היום אצעק צעקה כי מים רבים לא יוכלו לכבות אהבה והתשוקה ואחלה פניו יזכני בתשובתו בטוב טעמיו קודם שישים לדרך פעמיו בעזרת עושה שלום ואפיל תחינה לפני המשים בים דרך ובמים עזים נתיבה יסמכהו ברוח נדיבה ויוליכהו לשלום אל ביתו בלי פגע ומריבה ויבלה ימיו בטוב ושנותיו בנעימים כל הימים אכי"ר מוכן לשרתו ולברך בשמו אם יצוני ממקומו הצעיר מהללאל הלליה מציויטה נובה.

XXII [2] מלשון משנה וגמרא, במקום מרכבת המשנה, בראשית מ"א, מ"ג.

[3] במקום „עלמה", משלי ל', י"ט.

XXIII [1] במקום הכל הבל וכו' קהלת א', י"ד.

[2] הזמן בלתי נאמן, בטוי רגיל לגורל רע.

[3] משה במקום מְשֶׁה כלשון הכתוב שמות י"ב, ד'.

XXIV

(בכ"י D. 194 סימן נ"ב ובכ"י S. 11 בדף הפנימי של הכריכה בלי סימן)

טופס כתב בא אלי מעיר רומא מהנבון כמר דוד גיינאטאבו אבי אשתי השניה כשנתן לי את בתו לאשה גדול שמו ממרחקים דולה מים מבארות עמוקים צרור תעודה צבי קודש קהל ועדה שלום למר ולתורתו שלום.

אהללה שם אלקים בשיר ואגדלנו בתודה על התורה ועל התעודה אשר בחלק בתי עלתה לידבק בשכינה להשיא בתי לת"ח כמוך וכל הנביאים לא נתנבאו אלא למשיא בתו לת"ח כמותך ירבו בישראל מעוטר בכתב השלמות ובהביטי אל אותיותיך מכתב אלקים כעצם השמים לטהר נשתוממתי על המראה, עם שכבר ידעתיך מימי קדם במעשיך ובמדותיך משלו מן ההבל והבטול וכל היום חרוש תחרוש בתורה ובחכמה למצוא דברי חפץ ומדות טובות על כן מהרתי לדבקה בך בהיות השעה משחקת ומה' יצא הדבר ומה גם דשמא גרים כדאמרינן בברכות פ' קמא ואמרי' ביומא ר' מאיר הוה דייק בשמא וכשמך כן תהלתך ובשמך נגיל כל היום בה' תתהלל נפשי תמיד תהלתו בפי השם נפש בתי בחיים חיי עולם היא התורה תמימה משיבת נפש, עץ חיים היא למחזיקים בה צדק ושלום נשקו תודה שלמיו שלום שלום לך ושלום לעוזרך יהי שלום בחילך השם גבולך שלום ישים ביניכם שלום טובה וברכה חן וחסד ורחמים אכי"ר, רומא יום ו' ששה לחודש תמוז שנת[1] יצירה שלח להן לשבע סדר מברכיך ברוך כאב את בן ירצה הצעיר דוד בכמ"ר רפאל גיינאטאבו.

XXV

(בכ"י D. 194 סימן נ"ג ובכ"י S. 11 כנ"ל)

וזאת התשובה ששלחתי לו על אגרתו זאת צופי יערי ודבשי בחירי רצתה נפשי אדוני חותני עטרת ראשי שלום.

מהללאל אקרא לך אדוני ואודה שמך כי טוב בסוד ישרים ועדה במעשי ידיך ארנן כי שמחתני באגרתך הנעימה הבאה אלי מכרזת ואומרת איך נהירין ליה שבילי דנהר דיעה ובדבריו המתוקים מדבש טעמתי מן כזרע גד מגידים ומספרים כבודו היותו כמעיין המתגבר מקור נובע להשביע נפש שוקקה כמוני אשר כל היום וכל ימי צבאי איחל לשמוע קול מבשר טובו[1] משמיע שלומך וטובותיך ודאי על אמריו אמרי נועם אמרתי ברוך שחלק מחכמתו ליריאיו בשבח ותהלה לנורא תהלות אשר זכני והחייני וקיימני והגיעני לזמן הזה לקרב גבי דיהנא ואיש חיל אשר רוח אלקים בו חכמה ובתבונה ובדעת וכמעט דאחור נסוגיתי להשיב על דבריו בחשבי דבאתר

XXIV [1] מספר השנה=לשב"ע=ת"ב וגם מהתשובה (ע' כתב הבא) יוצא ברור שזה היה בשנת ת"ב (–1642)

XXV [1] רמז לשם גיינא–טוב.

זקוקין דנור ובעורין דאשא מאן מעמל דברי החלושות לתמן אבל משום דאין מסרבין לגדול כמוך לא עברתי ממצותיך ולא שכחתי וכאיש אשר יעור משנתו הקיצותי לעשות רצונך אדוני חפצתי דאהבתו חקוקה בלבי רשפיה רשפי אש שלהבת יה החפץ לעשות רצונך כבן יכבד אב מהללאל הלליה מציויטה נובה, ציויטה נובה יום ד׳ י״א תמוז הת״ב סדר הנני נותן לו את בריתי שלום.

XXVI (כ״ב)

(נמצא רק בכ״י D. 194)

וזאת כתבתי אל איש עמיתי על העשק שקבלתי מאיש קרובי, דודיו[1] ורעי חביבי יקירי בחירי רצתה נפשי שלום.

ואני תפלתי לך אדוני אל יחר אפך בעבדך אם אחרו פעמי תשובתי לבוא אל כ״ת כי לא במרד ולא במעל עשיתי אליו הסבה היתה כי כשבאה אגרתו התמימה לא הייתי בביתי וגם משום שעברתי בתבערה[2] ובקצף גדול עם קרובי כאשר ידעת ואך לא שבתי מחרון אפי ועוד היום האף הולך וסוער עלי כי מדבר אגרתך ראיתי חמס וריב בעיר כי גם איש שלומי אשר בטחתי בו הגדיל עלי עקב ואך עקוב יעקוב הכי נקרא שמו יעקב ויעקבני זה פעמים פעם אחת בדבור ופעם אחת במעשה וכבר ידע מר כי נחש ינחש איש אשר כמוני להיות נוקם ונוטר כנחש[3] על אנשים כאלו כהודאת רבנן קשישי ובפרט שראוי לעורר ולהרגיש[4] על אנשים שאינם נאמנים בבריתם וקיימים במאמרם ומרמות כל היום יהגו וכמדומה לי כי האיש הזה במקום בעל ברית נהפך לבעל רבית וריבות לאלפים[5] ולרבבות ולכן אמרתי העל אלה לא אפקוד אם בגוי[6] אשר כזה לא תתנקם נפשי אתמהא ולתשובת דבריו הישרים אמרתי בלבי כי בימי חנוכה הבע״ל אבוא שם בע״ה ואספר לפניו דברים כהוייתן ואת כל התלאה אשר מצאתני בעבור האיש הזה ועכ״ז אם ישמע ויטה אזנו אל האמת וישלם את נדרו אשליך במצולות ים כל חטאתיו ואעביר על מדותי ואם ימאן ויסרב לעשות הראוי לו אכוף אותו עפ״י המשפט והדין באמת ומשפט ובצדקה בין כך אוחילה לאל יפדה נפשי מקרב לי כי בריבים היה עמדי ולמעכ״ת מיהב יהיב שלמא חנא וחסדא ורחמין ומזוניה רוויחין עם כל בני ביתו המבורכים אכי״ר אוהב שלום ורודף שלום הצעיר מהללאל הלליה מציויטה נובה.

---

[1] כנראה דודו הנ״ל ר׳ יצחק הכהן מסיניגאלייא.

[2] עברתי–בתבערה לשון נופל על לשון.

[3] נחש–ינחש–כנחש–לנע״ל.

[4] במובן להתרגש ולהתקצף.

[5] ברית–רבית–ריבות–רבבות, לנע״ל.

[6] במובן עם הארץ וגם רוח (ירמיהו ה׳, ט׳).

XXVII (נ״ט)

טופס כתב שקבלתי מאהובי ידידי כששלחתי לו השבעה חרוזים שעשיתי כדלעיל[1] שיודיעני אם הוכשרו בעיניו כבודי ומרים ראשי נפשי קשורה בנפשו שלום.

אל יאשימני אדוני אם עם נייר הלבן[2] גרתי ואחר עד עתה להקביל פני פניני כ״ת כתוב המוטל עלי על כי לא ידעתי במה אקדם פניו וחסר מדעים אני אמרתי כשתבא לידי הזמנה אפתח שפתי ואענה הנה באה ונהייתה אגרתו ע״י נבון לחש וראה ראיתי את אשר הפליא לעשות חרוזים נעימים ומתוקנים יורה חצים ואבני בליסטראות על חומת אנך שש הנה שנא ה׳ ושבע תועבות נפשו ועם המשורר יאמר נא ישראל הלא משנאיך ה׳ אשנא ועם היות דבריו נכונים בדת שאין צריכים חזוק לא אאריך בדברים נורא תהלות יעלהו גם עלה על גפי מרומי ההצלחות אמן.

XXVIII (ס׳)

וזאת התשובה אשר שלחתי אליו על אגרתו זאת.

כל הון יקר נמצא לגבי דידי על קול ערב לימיני קול נאה קול הדר משפתותיו שושנים אמנם בעמק החרוץ כאשר כתבת אלי עיני ראו איך חבה יתרה נודעת לי אצל כ״ת כי הוספת שיר ושבחה להלל ולזמרה על חרוזים שעשיתי אין זה כי אם מדה טובה שבך כי מן הטוב לא יצא רק טוב[1] וגם כי כ״ת עם נייר הלבן גרת עד עתה עם כל זה מראהו כלבנון מלא מר ולבונה[2] זכה ותחת ידיו כמעשה לבנת הספיר באגרתו התמימה ברה כחמה ויפה כלבנה[3] אשים קנצי למילין בתפלה לאל עליון ישלח אליך עזרו מקדש ומציון אמן סלה לעבדו ולעשות רצונו באהבה מהללאל הלליה מציויטה נובה.

XXIX (ל״ז)

וזאת כתבתי אל קרובי בויניציאה על פטירת הגאון כמהר״ר שמחה לוצאטו ריש מתיבתא זצוק״ל מטה ענו הפורח נטע נעמן הצומח שלום.

לבי סחרחר עזבני כחי ונשמה לא נותרה בי מקול ענות חלושה בכל מדינה ומדינה ואצל כל פנה על הלקח נושא הצנה משען ומשענה אהמה כיונה בבכי כבנות יענה בחשבי דודי אנה פנה הלא הוא מרנא ורבנא מאומתיה מדרבנא הגאון כמהר״ר שמחה לוצאטו מלא רוח חכמה ובינה כי לא נאכל עוד מלחמו השמנה ואין מי

XXVII [1] אלה שבעת החרוזים הנזכרים לעיל בהקדמה למאמר זה.
[2] ר״ל שהשאיר את הנייר לבן ולא כתב לו מכתב.

XXVIII [1] אולי רמז ששם האיש הכותב לו שמו היה „מהטוב׳ del Bene.
[2–3] לבן–לבנון–לבונה–לבנת–כלבנה–לשון נופל על לשון.

שיאמר לנפשנו תשורי מראש אמנה בערב נלין בכי ולבקר קינהו[1] על הלקח ארון האלקים ביתו היה פתוח לעשירים ולעניים קל ברגליו כאחד הצבאים לעשות רצון אלקים חיים ועל הכל פדיון שבויים[2] שמעו הולך בכל האיים אמנם מה בצע להרבות פצע וחבורה הואל כי הגיע זמנו לומר שירה ראשון לכל דבר שבקדושה ארי שבחבורה תהיה נפשו בחיים צרורה לפניה כי טוב סחרה למרבה המשרה וצדיקים ישמחו יעלצו לפני אלקים וישישו בשמחה ואורה ואל שדי יאמר לצרותינו די ובימינו במהרה ינחמנו בבנין בית הבחירה אכי"ר בלב נשבר ונדכה קרוביך הצעיר מהללאל הלליה מציויטה נובה.

XXX (כ"ז)

(בכ"י D. 194 ובכ"י S. 11 על דף הכריכה בלי סימן)

וזאת כתבתי לבקשת מסכן בן חכם שהלך בגולה לבקש על המחיה ועל הכלכלה מאמינים בני מאמינים רחמנים בני רחמנים ששים ושמחים לעשות רצון קונם הנה הנם אחינו בית ישראל די בכל אתר ואתר שלומכון ישגא למדא ומן שמיא מיהב יהיב לכון חנא וחסדא אמן.

וה' בהיכל קדשו האל הקדוש נקדש בצדקה רם ונשא המשפילי לראות בשמים ובארץ צדקתו עומדת לעד להחיות רוח שפלים ולהחיות לב נדכאים ומביט אל עני ונכה רוח והרד על דברו כאיש הלזה ההולך לקראתכם ירא את ה' מנעוריו ועוד היום טעמו בו וריחו לא נמס גם כי מר לו בתורת ה' חפצו ובמצותיו חפץ מאז שמח ביסורין משה שמו בן חכם אשר הזמן בלתי נאמן בקש לעבדו כהמן[1] הממו הדמו וישקהו מי ראש מכמה הרפתקי דעדו עלוהי עד שהוצרך לילך מארצו וממולדתו בעירום ובחוסר כל ושם לדרך פעמיו בעבור משנאיו וקמיו כי קמו בו עדי שקר ויפח חמס הלשינוהו ומנכסיו שופטי העיר הפשיטוהו וכנחל שוטף שטפוהו[2] רדפוהו וצדיק מצרה נחלץ כי בורח הוא שלא ליפל ברשת זו טמנו לו צרים רדפוהו חנם זאת חלותינו למעכ"ת לעשות חסד עם האיש הזה ולעשות המצוה כתיקונה ולתת לו די מחסורו אשר יחסר לו בכל מקום אשר יעלה ויבוא יזכר ויפקד שמו ולא תדקדקו עמו בפרוטות היותו בן טובים וכ"ש דראוי לרחם עליו כי בן חכמים הוא מזרע ברוך ה' ואע"ג הני מהדורי מפום בדיתא[3] נינהו האי מאתר דאתקרי קושטא קא אתי דאביו תורת אמת היתה בפיהו ורבים השיב מעון העניק תעניקו

XXIX [1] במקום „רנה" כלשון הכתוב (תהלים ל' ו').

[2] ע"ד מצוות פדיון שבויים בקהלת ויניציאה ע' למעלה (VIII, IX).

XXX [1] זמן–נאמן–כהמן, לנע"ל.

[2] שופטי–הפשיטוהו–שטפוהו, כנ"ל.

[3] ר"ל הוא לא כמו אלה האחרים ששקר בפיהם (מפום בדיתא) כי אם איש אמת (קושטא) הוא.

לו העשיר לו ירבה[4] והדל לא ימעיט להיות בסומכי נפשו כיון שהשעה צריכה לו ופתוח תפתחו לו צרורות כספכם כי לכם הצדקה להחיות ולקיים נפש אחת מישראל וה׳ אל חי וקיים יושיעכם וישית לראשכם עטרת פז ויברך אתכם כאשר דבר לכם עם כל ישראל אחיכם ברוב עוז ושלום אכי״ר זעיר מן חברייא מהללאל הלליה מציויטה נובה מעתיר בעד עניא דא דדחיק ליה עלמא טובא.

XXXI

(בלי סימן על דף הכריכה)

וזאת כתבתי לבקשת אשה עניה סוערה ולבקשת איש עני ונכה רוח ציר נאמן לשולחיו לכל קהלות איטאליאה למען יתנו להם עזר וסיוע למחסורם כמבואר לקמן נחלת ה׳ עמו תפארת סגולתו אשלי רברבי הרים הגבוהים והאיתנים מוסדי ארץ נדיבי עמים מצדיקי חרבים וכו׳.

שאגת אריה וקול שחל זעקת אשה עצובת רוח אלמנה הנצבת עמנו בזה שמה מרת שמחה[1] נהפך לאבל שמחתה נתנה עלינו בקולה קול ענות חלושה דשדיא גלימא ופרכה ידה ואגב צערא קא אמרה מילין דעגמא נפשנו דמבעי למיחש לה לההיא איתתא ועיקרא דמילתא דלא מצית לאוקמא נפשה דכולהו גופי דארפתקי עדו עלה וחסורי מחסרא לה דאפילו נהמא דשערי לית לה וי לה מגוה וי לה מברא הן תוחלתה נכזבה אוי לה לספינה דאבד קברניטה אף גם זאת כי ריבה אחת יש לה בתולה צנועה ושידכה זה כמה ימים אל בחור א׳ נחמד וטוב מבני עמנו אשר כבר הגיע פרקה להנשא לו והחתן דופק ודוחק את השעה לקיים גזר דין שיש עמו שבועה ונפשה מרה לה פן יתיר ח״ו את הרצועה ואחרת יקח לו ויהי באמרה אלינו יום יום הדברים האלה לאמר עזרוני עזרוני בתפילה ובתחנונים אהניא לה צילותא דהדא עלובתא ראינו חובה לעצמנו כי ידענו באות ומופת צרת נפשה בהתחננה אלינו כי רבה היא זאת עשינו הסכמנו לתת לה כפי השגת ידינו אמנם לא הגיעה תקנה זו לחצי שעור מאשר עליה לעשות כדי להביא אשה לבית בעלה זאת חשבנו למשפט בנות ישראל למען לא ילבינו ראשן כי לפנים בישראל על הגאולה[2] ועל התרומה[3] רחמנים בני רחמנים ועדיין מנהג אבותיהם בידם להתנדב בעם ולהיות מעירנו ולאמר לדבק טוב הוא ובהיות כי האשה הזאת לא נסתה כף רגלה ללכת ממקום למקום ותשש כחה כנקבה וזקנה בחרה לשלוח השליח הזה מוחזק אצלנו ציר נאמן לשולחיו שמו יהודה בן דוד אשר נדבה רוחו ללכת ולכתת את רגליו כדי להביא אשה לבית בעלה אשר בידו מסרנו פנקס אחד חתום בחותם אמת

XXX [4] במקום „לא ירבה".

XXXI [1] שמחה, באיטלקית Allegra.

[2] הכונה כאן כנראה אל מצות פדיון שבוים.

[3] התרומה=צדקה (במקום התמורה).

מדפין חמשים אשר שם יעלה לזכרון איש כמתנת ידו הן בכלל והן בפרט זאת חלותינו למעכ"ת לעשות המצוה כתיקונה ולתת לשליח הזה די מחסורו צידה לדרך לכל מקום אשר יזכר ויפקד שמו ואל תדקדקו עמו בפרוטות כי בן טובים הוא וראוי לרחם עליו ואעג' דסתם מהדורי מפום בדיתא נינהו[4] האי מאתר דאיתקרי קושטא הנהו לכן העניק תעניקו לו העשיר לו ירבה והדל לא ימעיט ואל האשה הזאת בקשתנו היא למעכ"ת להיות בסומכי נפשה כיון שהשעה צריכה לה לכן פתחו לה צרורות כספכם וזהבכם כי לכם הצדקה וה' אלקים אמת יושיע אתכם וישית לראשכם עטרת פז ויברך אתכם עם כל ישראל אחיכם אכי"ר כה דבר עפר ואפר הצעיר מהללאל הלליה מציויטה נובה כותב וחותם פה אנקונא בשם ממוני ופרנסי הק"ק יע"א.

---

[4] נוסח כל ההמלצה כמו לעיל בכתב XXX.

ל"א המכתבים הנ"ל הם כאמור במבוא רק חלק מאגרותיו של הרב הלליה (יהודי איטליה היו משתמשים בבטוי „כתב" במובן אגרת, ע' משה דוד קאסוטו במאמרו בספר־היובל לכבוד אריה בלוי ו„זאת ליהודה", הערה 39) ומכתבים מערך זה פרסם, מלבד החכמים הנזכרים בראשית המבוא, גם החכם הנ"ל קאסוטו בספרו ע"ד היהודים בפירינצי, במאמריו בה„ריוויסטא איזראעליטיקא" שנה ז', ב„הצופה לחכמת ישראל" שנה ח' וב„השקפה הצרפתית" כרך ע"ז. ע' גם מה שפרסם החכם הזה בדבר אגרות ר' עובדיה מברטנורה בספר היובל הנ"ל דף 296–302. השם „ציויטה נובה" כוונתו לא רק לשם עיר מולדתו של הרב כי אם חלק משמו הפרטי וצריך היה לקרוא את המאמר בשם אגרות הרב מהללאל הלליה מציויטה נובה מאנקונה אלא מפני אריכות השם קיצרתי ובנוגע לשם ציויטה נובה ע' מאמרו של י. זונה ב„השקפה הצרפתית" כרך פ"ט, דף 360–380. באיזו מדה היו „כתבים" כאלה נפוצים בתור מכתבים למופת בעד צעירים וחובשי בית המדרש שעדיין לא למדו למשוך בעט שבט סופרים אפשר לראות מזה שהמכתבים סימן י"ט וכ' הנ"ל שנכתבו על ידי שלמה ניצה הצעיר אל הרב הלליה הם לקוחים ורשומים כמעט בשלימותם ומלה במלה מ„כתבי" הרב יהודה אריה ממודינה שפרסם החכם בלוי (סימן כ"ט ול'). ובהזדמנות אחרת אקוה לפרסם את שאר „כתבי" הרב מציויטה נובה.

THE LOVE LETTERS OF BENDET SCHOTTLAENDER[1]

By **JACOB RADER MARCUS**, Hebrew Union College, Cincinnati, Ohio

PERSONAL letters are nearly always of historical importance after a century or more. They present to us vividly and honestly an insight into an age that is not readily secured in other ways. The first decade of the nineteenth century is of importance not only because it is now a distant period, but because it is one of the decades that marks the emergence of the Jew in Central and Western Europe from the Ghetto life into the wider Christian national life. We are not so rich in human

---

[1] Schottlaender signs himself Bendet Schottlaender. His Hebrew name we know was Baruch. When the Jews of the Westphalian Kingdom in 1808 were ordered to take permanent names, he, very probably, then began to call himself, Benedict Schott, although the name Schottlaender also occurs after this. The following literature has been used for the sketch of his life:

Arnheim, Dr. *Die Jacobson-Schule zu Seesen am Harz.* 2te Auflage. Braunschweig. 1867. p. 12ff.

Lazarus, Felix. *Das Koeniglich Westphaelische Konsistorium der Israeliten.* Pressburg. 1914.

Lewinsky, A. Hofrath Benedict Schott. *Allgemeine Zeitung des Judenthums* (*AZJ*) Vol. 65. 1901. p. 460ff.

Ein altes Lesebuch. *AZJ.* Vol. 70. 1906. p. 186ff.

Benedict Schott. *Jewish Encyclopaedia.* Vol. XI. p. 110.

Marcus, J. R. Israel Jacobson. Corrected Reprint from the *Yearbook of the Central Conference of American Rabbis.* Vol. XXXVIII. 1928.

Philippson, Ph. *Biographische Skizzen.* 2te Heft. Leipzig. 1864. p. 168.

Ruelf, Dr. Einiges aus der ersten Zeit und ueber den Stifter der Jacobson-Schule. *Juedisches Litteratur-Blatt.* Jahrg. XVIII. Nr. 45–25. XIX. Nr. 1–2. 1889–1890.

Steinschneider, M. *Cat. Bodl.* col. 2573: Nr. 7147.

Wohlwill, Imm. Correspondence on the Seesen School. Sept. 1846. *AZJ.* Vol. XI. 1847. p. 10ff.

Zimmermann, Paul. Israel Jacobson. *Braunschweigisches Magazin.* September-Oktober. 1906.

There are at least two portraits of Schottlaender extant. On the back of the first is the legend: "peint par Rüter Sen. 1804. Ich heisste Benedictus Schottlaenderus aus Danzig." It is the face of a handsome man who bears a interest materials that we are not grateful for these letters. Schottlaender did not write them for posterity, yet they present to us, unwittingly, a picture of the life and daily activities of an intelligent Jewish liberal of that time. This was the age of transition, and the changes are reflected in these letters in more than one way.

The life story of Schottlaender is soon told. He was born at Danzig on the 11th of March, 1763.[2] Orphaned in youth, left without means, he wandered to Poland where he lived the life of a *Baḥur* studying Talmud and acquiring a good Hebrew training. His fluency in Hebrew is evidenced by his writings in *Ha-Me'assef* and the translations of the old Latin classics which he made for himself. From Poland he returned to Germany carrying with him a recommendation of a prominent rabbi, and made his way from town to town. He finally settled in Berlin after he had already been in Glogau and Breslau. In Berlin around the year 1799 he taught at the home of Herz Beer, who with Israel Jacobson established the first Reform Jewish service in that city in 1815. While tutoring in that home, where he probably taught Meyerbeer, he furthered himself by private

---

resemblance to the poet Schiller. Schottlaender then wore his hair long, almost to his shoulders. Below his broad forehead two bright eyes smiled shrewdly out upon the world; the nose was long and thin and sensitive, the lower part of the face was oval, the under lip was broad and hanging, the chin was firm. The impression one has is that here were refinement, decided intelligence and cleverness. The second portrait was made many years later when he was quite old but still principal of the school. It is the picture of a kindly old man who has obviously worked hard and suffered in the struggle of life and who is now tired and weary.

[2] Although his grave stone gives 1763 as the date of his birth some biographers give 1764. The Jewish community at Schottland (one of the component parts of Danzig and from which Schottlaender got his name) was founded only a couple of decades before his birth by three brothers from the province of Brandenburg. One was named Bendit. It is not impossible that this was the grandfather of Schottlaender. Cf. Dr. Bram. Zur Geschichte der Juden in Danzig, in *Volks-Kalender fuer Israeliten auf das Jahr 5609* (1849). Herausgegeben von K. Klein Vol. VIII. Koenigsberg. 1849. pp. 124ff.

There is a family tradition that the first members of the family who came to Schottland were Spanish Jews. If the tradition is authentic then these forbears may have been Sephardic emigrés from either Emden or Hamburg.

study. Like most of the Jewish leaders of the late eighteenth and early nineteenth centuries he was self-taught.[2a]

From Berlin he came to Brunswick, to Israel Jacobson, the fiscal agent of the Duke of Brunswick-Lueneburg. He probably tutored in the Jacobson family, and this intimate contact gave the banker an opportunity to discover his abilities. Jacobson considered Schottlaender a man of unusual administrative and executive ability and of learning, and his opinion was shared by some discriminating contemporaries.

In 1801 Jacobson established a Jewish school in Seesen. Hofrat Zincken, a Gentile, who had been an auditor of the Hessian troops in America during the Revolutionary War, was in charge from 1801–1803. Schottlaender, sometime after 1801,[3] became an instructor there and in 1805, at the very latest, was appointed principal; for Abbé Grégoire, the distinguished French liberal, who visited the school then, already found Schottlaender, "a man of zeal and light," as the principal. That same year, 1805, he was made Court-Councillor (Hofrat) by the Landgrave Louis X of Hesse-Darmstadt. Jacobson, who was very fond of Schottlaender, had at first tried, though unsuccessfully, to secure this title for his favorite from Duke Charles William Ferdinand of Brunswick. The refusal of this courtesy hurt Jacobson a great deal and was one of the reasons for his threatened resignation in 1806 as fiscal agent of the Duke. The same year, 1806, at the request of Jacobson, Schottlaender went to Paris and presented a memorial on the necessity of better education for Jews to the Deputies of the Assembly of Jewish Notables called by Napoleon.[4]

[2a] There is a family tradition that he knew 14 languages, including Sanskrit.

[3] In the eulogy delivered after the death of Jacobson, 1828, Schottlaender says he has been 30 years in his service. *Sulamith* VII, 2. p. 49.

[4] This memorial may be "Les premiers pas de la nation juive vers le bonheur sous les auspices du grand Monarque Napoléon." Paris. 1806, of which Jacobson is reputedly the author. Cf. the following note. Schottlaender is also the author of the following works:

Der Levit von Ephraim. Breslau. 1798. This is probably a translation of the French tragedy, "le Lévite d'Ephraïm," of Népomucène Lemercier, 1796.

Toldoth-Noach oder Die Geschichte der Suendfluth. Breslau. 1798–1799. An Epos in 12 songs for edification and entertainment.

In 1807 Jacobson went to Cassel and began the organization of the famous Westphalian Jewish Consistory. Schottlaender, without question, was his constant adviser and possibly the author of some of the writings ascribed to Jacobson.[5] To support the new consistorial organization, which was looked on with suspicion by the masses who feared an attack on the ancestral faith, Schottlaender published anonymously a circular letter addressed to his "brethren the Israelites of Westphalia."[6] In this short appeal he shows himself to be a typical Mendelssohnian rationalist. Religious and cultural conditions, he says, are very bad now in Jewish life; education is the key to all improvement. He attacked the superstitions and the ignorance of his age, but did not fail at the same time to reproach those pseudo-liberals who scoffed at all religion. The Consistory, he insisted, must be

---

Kol Simra oder Lied zum Geburtstage des Herrn Lippmann Tausk. (Grandfather of Meyerbeer) Hebrew and German. Berlin. 1799.

Zaphnat-Paneach. Vol. I. Koenigslutter. 1804. Vol. II. Hildesheim. 1812. Textbook and reader prepared for use of the children in the Jacobson School at Seesen. In German.

A History of the Jews. [Abbé Grégoire, who visited Schottlaender in 1805, said he was "preparing a history of his nation." I question, however, if it was ever written].

Sendschreiben an meine Brueder, die Israeliten in Westfalen, die Errichtung eines juedischen Konsistoriums betreffend. Braunschweig. 1808.

A psalmodic contemplation concerning the prosperity of the wicked. So Steinschneider entitles the Hebrew chapter in the *Me'assef.* Vol. VIII. 1809. Berlin. pp. 200–202.

Hebrew translation of the Sendschreiben an meine Brueder. *Me'assef.* Vol. IX. 1810. Altona. p. 9ff. The note on page 14 of the Hebrew translation is not found in the German original.

Ueber die Wichtigkeit der Lehre von der Unsterblichkeit der Seele. *Sulamith* VI. 2. 1822–1825 [?] pp. 84–101. A sermon preached at the Seesen Temple.

Die Armuth. Eine Parabel. *Sulamith.* VI. 2. 1822–1825 [?] pp. 394–397.

Eulogy on Israel Jacobson. *Sulamith* VII. 2. c. 1828–1833. pp. 39ff.

Die wichtigsten Pflichten der Israeliten. Donaueschingen. 1839.

[5] Felix Lazarus, p. 12, is of the opinion that Schottlaender, probably, not Jacobson, was the author of "Les premiers pas," which made an appeal to Napoleon to establish a universal authoritative religious organization for Judaism.

[6] For a more detailed analysis cf. Marcus: Israel Jacobson, pp. 52ff.

supported for it will provide a good Jewish education for all.[7] Schottlaender's appeal probably did little to reassure the disturbed Jewish masses in Westphalia. His eighteenth century Enlightenment liberalism, his rational approach, his desire to revamp the ceremonial did not tend to calm those who clung tenaciously to the customs of the fathers. His type of liberalism was not acceptable to the average Jew of that day. His orthodox contemporaries always suspected, and very probably justly, that he had a hand in the religious innovations made by the Westphalian Consistory.[8] Even the consistorial officials, Jacobson's cabinet, deplored the radicalism of Schottlaender and denounced him in 1811, because, at a confirmation service he had used a ritual that had been prepared in part by a Christian pastor. These consistorial councillors betrayed their distrust of his teachings by requesting him to submit the note books of the children who took religious instruction, and they did not even hesitate to make a surprise visit to the school at Seesen to determine what he was really doing.[9]

He was in charge of the Seesen school till his retirement in 1838. About 500 students, one third of whom were Christians, were educated there during the years of his leadership. He retired July 1, 1838 in his seventy-fifth year and died July 21, 1846 at Seesen mourned and respected by Jew and Gentile in that small community.

Jacobson, we have just read, sent Schottlaender to Paris in 1806 to present a memorial on the need for better education for Jews. This essay was submitted to the Assembly of Jewish Notables called by Napoleon for the apparent purpose of devising means to lead the Jews into more useful occupations. He was probably present at the opening meeting, July 26, 1806, to hand over his petition. In Paris he met, probably for the first time, Therese Frank, whom he courted and to whom he became engaged before he left. He was then forty-two years of age;

---

[7] For a more detailed discussion of his ideas on education cf. Lewinsky, Ein altes Lesebuch. *AZJ*. Vol. 70. 1906. pp. 186ff.

[8] Auerbach, B. H. *Geschichte der israelitischen Gemeinde Halberstadt*. Halberstadt. 1866. p. 140.

[9] Lazarus, pp. 69–71.

she, born the 14th day of August, 1790, was only sixteen.[10] Our lover left Paris late in August 1806 and by the 10th of September was already back in Seesen. As soon as he arrived he started to write to his sweetheart—"Nini," he called her—and continued the correspondence till she came on to join him in the Spring of 1807. They were married in the Summer.

Schottlaender wrote not only to his fiancée, but also to her mother and to a Mr. Trenell, evidently a brother of Mrs. Frank, the mother of his future wife. Usually the letter to "Nini" included one to the mother and the mother's brother. Postage was expensive in those days! Israel Jacobson also wrote a short note of congratulation to the young girl. We do not possess any of "Nini's" letters to her sedate lover. She, however, saved his and no doubt brought them to Seesen when she came on to be married. Through the Schottlaender family they finally came to the Jewish National and University Library in Jerusalem whence I have secured them.[11] I found also among them one sent to "Nini" by her brother, no doubt after she was already in Seesen and married. The German letters, following the custom of the age, are written in the Hebrew script; the French in the Latin script. I have attempted to reproduce the letters as they were actually written with as little "editing" as possible. Schottlaender, like his illustrious contemporary Heine, was careless in the declension of adjectives and often indifferent to the case governed by prepositions. Like Heine he no doubt believed: "We poor Germans . . . torture one another with the accusative and dative."[12] The errors and inconsistencies in grammar, spelling and accentuation in German and French are Schottlaenders. I reproduce them; they are typical of an age which found it difficult to forget its Yiddish.

---

[10] Therese Frank survived her husband 14 years. She died the 8th of November, 1860.

In a personal letter from Dr. Ing. h. c. Friedrich Schott, Geh. Kommerzienrat, I am informed that there were six children: Marie, Louise, Eduard, Konstanz, Emil, the father of Friedrich Schott, and Theodor. Schottlaender himself had his children baptized in order to further their careers. Emil at first refused to accept baptism but later yielded when in order to secure an official position a certificate of baptism was demanded.

[11] Cf. *Kiryath Sepher.* 1.4. Jerusalem. 1925. p. 242. The Jewish National and University Library in Jerusalem possesses the originals—and may I here, thank them for their courtesy in permitting copies to be made for my use. Mr. Schwadron was kind enough to make the copies for me and I wish here to express my thanks to him, too, for his courtesy. A transliteration into Latin script of all the letters published here was made years ago by an official of the British Museum. Mr. Schott, a descendant of the family, now living in Heidelberg, was kind enough to send this transliteration to me. On the whole the transliteration was poorly done. However it included letters Nos.: III; IV.A; VI.A; which are not found among the originals at the Jerusalem library. The textual correctness therefore of Nos. III; IV.A; and VI.A, cannot be determined for lack of originals. I have left them as they are. I have put the Hebrew words in Italics; words underlined were so marked by Schottlaender himself. Dots indicate that the letters were torn or the words illegible. Finally I wish to express my thanks to Mrs. Moses Marx of Cincinnati who has been most kind in helping me edit the letters.

I

Mayence le 5me Sept.
1806
7 heures du matin

Ma chère Nini!

Suivant ma promesse je ne manque pas de vous donner de mes nouvelles—je viens d'arriver ici sain et sauf d'un merie, (sic) puisse le Ciel propice à mes voeux me donner bientôt les memes nouvelles de vous, saluez de ma part votre chère mère votre grand mère votre oncle Trenel & sa chère épouse ainsi que toute votre famile. Adieu, de Brunsvic je vous écrirai.

B Schottland

baisez de ma part ma chère Lalotte et ma chère Fenny. j'espère qu'elles seront parfaitement rétablis de leur maladie. je suis logé chez monsieur Lorch mais je mange chez Madam Benjamin qui vous faites ses compliments, je lui ai montré votre portrait

---

Since writing the above I have received from Mr. F. Schott a photostatic copy of another letter sent by Schottlaender to "Nini." It was sent from Mainz, the 5th of September, as he returned from Paris. It is written in the Latin script.

[12] Cf. Hirth, F. *Heinrich Heines Briefwechsel.* Vol. I. 1914. Muenchen. pp. 126–128.

dont elle trouve bien ressemblant, nous avons beaucoup parlé de vous comme vous pouvez vous imaginer.

[addressed]:
Nini Frank chez
Monsieur Trenel
vieille rue du Temple No. 82.
Paris

B'H Seesen. Yom 2 Ẓom Gedaliah. 567 L'[13]
Meine liebe Nini![14]

Ich eile Dir die Nachricht mitzutheilen, dass ich gesund und wohlbehalten Mittwoch in der Nacht um 2 Uhr hier angelangt bin und saemtliche Zoeglinge sowie die Lehrer bei dem bestem Wohlsein angetroffen habe. Auf der Reise ist mir weiter nichts ausserordentliches begegnet ausser dass mir zwischen *FF'D*[15] und Friedberg[16] ein Paket worin der groesste Theil meiner Kleidungsstuecke und noch einige Kleinigkeiten waren gestohlen worden ist. Dieser Verlust schmerzte mich aber nicht so als der Mangel einer Nachricht von Dir. Du hattest mir versprochen dass ich in Mainz einen Brief von Dir finden sollte. Ich hatte sicher darauf gerechnet und wurde in meiner Hoffnung betrogen. Dies machte mich waehrend der ganzen Reise unruhig. Dein wuerdiger lieber Onkel H' *Binyamin*[17] hat mich zwar in einem Schreiben an seine Frau wegen Deinen Gesundheitsumstaenden zu beruhigen gesucht. Allein solange ich kein eigenhaendiges Schreiben von

---

[13] Hebrew: With the help of God. Seesen. Monday. Fast of Gedaliah. 567 according to the shorter reckoning. [Sept. 15, 1806].

[14] Nini is Therese Frank. The name Frank, Franc, Franck, Franq, Franque occurs in the latter part of the 18th and the first part of the 19th centuries in Paris. Some of them are from Metz as were the Trenelles. Cf. the index of P. Hildenfinger, *Documents sur les Juifs à Paris*, Paris. 1913, and the various works of Léon Kahn that are cited below.

[15] Hebrew: Frankfort on the Main.

[16] This is Friedberg in the Wetterau, Grand-Duchy of Hesse-Darmstadt.

[17] H' is Herr. This Uncle Benjamin is probably identical with Jacob Benjamin (Binyamin) who was a delegate from Mayence to the Assembly of Notables in 1806 and to the Great Sanhedrin. This Jacob Benjamin had quartermaster duties with the 26th Division of the French Army. Cf. Anchel, Robert. *Napoléon et les Juifs*. Paris. 1928. p. 140; [Tama, D.] *Organisation civile et religieuse des Israélites*. Paris. 1808. pp. 114ff; p. 272.

Dir sehe, kann ich mich nicht zufrieden geben. Reisse mich doch ja bald aus dieser qualvollen Ungewissheit, und schreibe mir wie du Dich befindest, ob Du von Deiner Unpaesslichkeit wieder voellig hergestellt bist und recht munter und wohl bist. Eine weite, weite Kluft trennt uns voneinander aber mein Geist ist immer bei Dir. Dein Bildnis liegt immer vor mir und es ist mir als wenn ich Dich sprechen hoerte. Ach, wenn ich nur eine Viertel Stunde mich mit Dir unterhalten koennte. Aber das sind vergebliche Wuensche. Genug davon! Die Aussicht in der Zukunft, wo wir immer unzertrennlich bei einander sein werden, muss mich troesten und mich mit Geduld wappnen.

Ich bin vergangenen Donnerstag in Braunschweig gewesen, habe mit H' Jacobssohn[18] und seiner Familie recht viel von Dir und den Deinigen gesprochen. Dein Portrait hat ihm sehr gefallen. Ich zweifle nicht, dass er als ein zaertlicher Vater[19] gegen uns handeln und all sein Kraefte aufbieten wird uns recht gluecklich zu machen. Morgen kommt H' Jacobssohn zur mir her und da sollst Du auch von ihm Antwort erhalten. Meine Geschaefte rufen mich ab.

Leb wohl meine liebe gute Nini und denke recht fleissig an Deinen Dich liebenden.

Bendet Schottlaender.

Ich gruesse viel mal mein lieber Vater und Schwager sie sollen fleissig an mir denken.[20]

* * *

Meine liebe gute Mutter Charlotte!

Ich sollte eigentlich boese mit Ihnen sein, dass Sie Ihr Wort nicht gehalten, und mir nach Mainz geschrieben haben. Indessen mag es Ihnen fuer diesmal verziehen sein. Wenn Sie es kuenftig nur wieder einbringen und mir recht oft Nachricht von sich geben. Dass ich gluecklich an dem Ort meiner Bestimmung angekommen bin ersehen Sie aus meinem Schreiben an meine liebe Nini. Ich muss Ihnen nur noch sagen dass ich schon alles arrangiert habe dass wir immer beisammen bleiben koennen. Das soll, wills Gott, ein herrliches Leben werden. Ich meinerseits werde gewiss alles thun was in meinen Kraeften steht Ihre Tage zu versuessen. Sie sollen einen guten folgsamen Sohn in mir finden.

---

[18] This is Israel Jacobson who was at this time the fiscal agent of Duke Charles William Ferdinand of Brunswick.

[19] Although Schottlaender expects Jacobson to be a "tender father" to him and his bride, the "father" was now five years younger than the hopeful "son."

[20] This postscript is in a different handwriting. Schottlaender had no father in Paris. The brother-in-law is Lieberman (or L. Berman) Frank, the brother of Nini. Who "Father Frank" is, as he is later called, I do not know. Charlotte Frank, the mother of Nini, is obviously a widow for she, too, is coming to Seesen to live with her son-in-law, Schottlaender.

Machen Sie sich also huebsch fertig, damit Sie je eher je lieber mit meiner lieben Nini zu mir kommen koennen. Mit Ungeduld erwartet dieses

Ihr treuer Sie schaetzender Sohn
Bendet Schottlaender.

* * *

Guten Morgen mein lieber Onkel Trenell.[21]

Ich bin nun wieder in mein Seesen in meiner kleinen Welt wo ich alle Haende voll zu thun habe. Deshalb aber habe ich meinen lieben Freund noch nicht vergessen, vielmehr denke ich mit Wonne an die Tage zurueck die ich in seinem Hause in dem Zirkel seiner Familie verlebt habe. Empfangen Sie daher mein Lieber nochmals meinen verbindlichsten Dank fuer all das Gute das ich in Ihrem Hause genossen habe. Seien Sie ferner der Vater und der Wohlthaeter meiner lieben guten Nini. Haben Sie Nachsicht mit ihren kleinen Fehlern, und weisen ihr mit Sanftmuht und Guete zurecht wenn sie sich je vergeht. Ihr Herz ist doch gut und edel. Gruessen Sie mir vieltausend mal Ihre liebe Frau und meine liebe Kousinchen die gute Fenny und . . . Lalotte. Ihre Bildnisse hab ich vor meinem Schreibtisch befestigt. Der Anblick derselben macht mir tausend Freude. Gruessen Sie mir auch unsere gute Grossmutter,[22] den Onkel *Shemu'el.*[23] Besonders aber den vortrefflichen Herrn *Binyamin* und meinen Freund H' Lorch[24] wie auch den guten Friedberg[25] und behalten Sie immer lieb Ihren

---

[21] This is probably Moise Goudchaux Trenelle (Trénel) who was born at Metz, 1759 and came to Paris no later than 1775. He was a constant subscriber to charities and was an officer of one of the Ashkenazic charitable societies for a while. He was still living in 1823. Jacob Traisnel (Trénel, Trenelle,) also a négociant and like M. G. Trenelle, also originally from Metz, who was in Paris as early as 1756, may be his father.

cf. Kahn, Léon. *Les Sociétés de secours mutuels.* Paris. 1887. p. 160.
Kahn, Léon. *Les Professions Manuelles.* Paris. 1885. p. 70.
Kahn, Léon. *Les Juifs à Paris.* Paris. 1889. p. 217; 224.
Kahn, Léon. *Le Comité de Bienfaisance.* Paris. 1886. p. 115; 193; 202.
Kahn, Léon. Les Juifs de Paris 1755 A 1759. *Revue des Études Juives.* Vol. 49. 1904. pp. 136ff.
Hildenfinger, p. 130; 270; 273.
Ginsburger, M. Les Juifs de Metz sous l'ancien régime. *Revue des Études Juives.* Vol. 50. 1905. pp. 112ff; 260.

Freund
Bendet Schottlaender.

Der kleine Josef haelt sich recht gut. Herr Hess, der neue Lehrer, muss erst in der Folge seine Tauglichkeit bewaehren, wenn der neue Lektionsplan gemacht sein wird. Noch unterrichtet er nicht.

[franking date]: [addressed]:
Septembre Monsieur M. Trenell vieille rue du Temple
26 No. 82 à Paris.
1806

Franco Mainz.

[The following note was written on the right side of the address]:

Schreiben Sie mir doch gefaelligst wenn dieser Brief angekommen ist und wieviel Porto er gekostet.

---

[22] If the grandmother here is the wife of Jacob Traisnel (Trenelle) then she was Sophie Hirsch, daughter of Samuel Hirsch, a pensioner of the King of France and the Empress, the Queen of Hungary. Samuel Hirsch died in Paris in August 1787. Hirsch was a professional rat-killer. Hildenfinger. p. 270.

[23] Samuel was a well known family name in Paris at this time.

[24] This is probably Hertz Loeb Lorch (Herz-Loep-Lorech, Hugues Léon Lorch, Hugo Leo Lorch) a wealthy Jew of Mayence. Like Jacob Benjamin he was a delegate to the Assembly of Notables in 1806. He prided himself on being a Freemason. Like others in 1808 he sought exemption from the new anti-Jewish decrees of Napoleon. His father Loeb Salomon Lorch was famous for his charities. Anchel, p. 29; 354; 390. [Tama] *Organisation*, p. 114.

[25] Aron (Aaron) Friedberg is like Benjamin and Lorch also a delegate to the Assembly of Notables from Mayence, and like Benjamin he was also

II

B'H Seesen Yom 5 13 Tishri 567 L'[26]

Mademoiselle Therese Frank
à Paris

Meine liebe Nini!

Ich habe Deinen Brief richtig erhalten, und freue mich inniglich dass Du von Deiner Unpaesslichkeit wieder hergestellt bist und hoffe dass Du bei dem Empfang dieses Schreibens wieder recht gesund munter und lustig sein wirst. Fuer Deinen herzlichen Glueckswunsch zum neuen Jahr danke ich Dir verbindlichst. Ich habe Dich und unsere ganze liebe Familie in diesen heiligen Tagen in mein Gebet eingeschlossen. Der liebe Gott hat mein Gebet gewiss erhoert und wird uns beiderseitig gluecklich machen. Wir wollen das Unsrige dazu beitragen und einer den Anderen durch zuvorkommende Guete durch Sanftmuht und durch Nachsicht mit unsern Fehlern unser Leben zu versuessen suchen. Mache Dich die Zeit, welche Du meine Liebe in Paris bist recht lustig. Noch einige Monate dann sind wir unzertrennlich vereinigt. Ich habe bei meiner Herkunft soviele Arbeit vorgefunden, dass ich keinen Augenblick zur Erholung uebrig habe. Ich denke aber desto oefter an Dich meine liebe Nini und schmeichle mir dass Du es auch oft thun wirst. Einliegend findest Du ein eigenhaendiges Schreiben von Herrn Jacobssohn als Antwort auf Dein Briefchen. Gruesse mir Deine liebe Mutter und Grossmutter, meinen Onkel Trenell und seine liebe Frau, unsere liebe Tante, besonders die kleine Lalotte deren Briefchen mir viel Freude gemacht hat. Und auch meine gute Fenny die mir hoffentlich auch schreiben wird. Unseren lieben H' *Binyamin* and alle meine gute Freunde. Sobald ich kann schreibe ich an jeden besonders. Schreibe mir immer franzoesisch liebe Nini, aber gib huebsch Achtung auf die Regeln der Grammatik als auch auf die richtige Schreibart. Deinen letzten Brief

---

elected to the Great Sanhedrin. He employed several hundred workers in Bingen where he manufactured cloth. His business carried him to the fairs at Mayence and Frankfort on the Main. Anchel, p. 140; [Tama] *Organisation*, p. 114; 272.

[26] Hebrew: With the help of God. Seesen. Thursday. 13th of Tishri. 567 according to the shorter reckoning. [Sept. 25, 1806].

moechte ich um alles in der Welt keinen Menschen zeigen.[27] Ich hoffe, Du wirst dies als einen Beweis meiner Liebe gegen Dich annehmen dass ich Dich darauf aufmerksam mache. Deine Ehre ist zu sehr mit der meinigen verbunden, aber liebe Nini, mach kein saur Gesichtchen. Ich bin Dir . . . das weist Du. Leb wohl und schreibe bald Deinen Freund Bendet Sch.

Ich habe die beiden Briefe, der eine vom 2t und der andre vom 5t zu gleicher Zeit erhalten.

[addressed]:
Monsieur M. Trenell négociant
vieille rue du Temple No. 82
à Paris

Franco-Mayence
pour remettre à Mlle Nini

* * *

[The following letter of Israel Jacobson was very probably enclosed in the above letter.]

B'H Seesen 7 Tishri 567 L'[28]

Hochzuehrende Demoiselle Braut.

Zu Ihrer Verbindung mit dem Herrn Hofrat Schottlaender, welche Sie mir anzuzeigen die Guete gehabt, wuensche ich von Herzen viel Glueck und Segen. Ich zweifle nicht, dass Sie der Wahl dieses Mannes vollkommen wuerdig sind und beiderseitig eine glueckliches zufriednes Leben mit einander fuehren werden. Da glueckliche Menschen um mich zu sehen meine groesste Freude ist, so werde ich meinerseits gerne zu Ihrer Zufriedenheit so viel beitragen als ich kann, und das Zutrauen zu rechtfertigen suchen das Sie zu mir zu fassen die Guete hatten. Mit Achtung harre Ihr ganz ergebenst

I. [?]. Jacobsohn.

---

[27] It may be that this reflection on Nini's ability to write French is the cause of the lovers' quarrel that is reflected in the following letters.

[28] Hebrew: With the help of God. Seesen. 7th of Tishri. 567 according to the shorter reckoning .[Friday. Sept. 19, 1806].

III

Seesen 12. Oct. 1806.

Mein lieber Freund Herr Trenell.

Ich habe beide Briefe richtig erhalten. In beiden finde ich die Bestaetigung, dass Sie, Ihre liebe Frau,—bis hundert Jahr—sowie unsere ganze Familie sich wohl und munter befinden. Das ist mir die Hauptsache und macht mir Freude. Von meiner Seite kann ich Gottlob ein Gleiches berichten. Nur dass ich noch erschrecklich viel zu thun habe, und mir kaum die Zeit zum Essen uebrig bleibt. Dabei bekomme ich bestaendig vornehme Besuche, denen ich aufwarten und unterhalten muss. Vergangenen Donnerstag hat die Princess Auguste,[29] Schwester des Herzogs von Braunschweig, die Princess von Coburg und noch andere fuerstliche Personen unsere Schule mit ihrem Besuch beehrt. Ich hatte einen fuerstlichen Koch von Braunschweig kommen lassen und auch ein praechtiges Dejeuner gegeben. Herr Jacobssohn war in Gesellschaft vieler vornehmer Herren auch hier. Wir haben viel von Paris und wie sich von selbst versteht, von meiner Verbindung gesprochen. Die Princess hat das Portrait von Nini und Ihren Kindern mit ihrem Beifall beehrt. Alle sind vergnuegt und zufrieden abgereist. Freitag darauf wurde ich und Herr Jacobssohn von der Princessin nach Gandersheim, wo sie Aebtissin ist, eingeladen, wo wir unter lauter Adligen ebenfalls mit einem herrlichen Dejeuner bewirthet worden sind.

Fuer die mir uebersandten Sachen der Assemblée[30] betreffend sage ich Ihnen herzlichen Dank. Ich hatte die ganze Geschichte nicht allein im Original Franzoesisch sondern auch im Hebraeischen und deutscher Sprache uebersetzt schon 8 Tage vorher zugeschickt bekommen, was das Resultat von dem Allem sein wird? weiss ich nicht. Soviel glaube ich aber, dass kein Auslaender so leicht deshalb nach Paris reisen wird. Die Behandlung die ich dort erfahren, kann wenigstens keinen dazu reizen. Auch scheint der President und viele Deputierte es nicht zu wuenschen, dass Auslaender herkommen moechten.[31] Ich habe fuer das Beste meiner Nation[32] gethan was ich konnte. Mein Bewusstsein ist mir Belohnung genug. Weiter will ich nichts wissen. Aus Ihrem zweiten Briefe sehe ich mit Vergnuegen, dass Sie meinen ersten Brief von hier aus die erste Nacht erhalten haben. Ich hoffe dass Sie nun meinen zweiten auch in Haenden haben werden. Dass unser lieber Onkel Benjamin auch mein Freund Herr Lorch am *Simḥat Torah*[33] zu Hause gereist sind freut mich herzlich.[34] Schade, dass ich's nicht eher erfahren habe so haette ich an Sie geschrieben. Jetzt werden sie wahrscheinlich schon wieder in Paris sein. Mein Werk das Herr Lorch fuer den Ra[bbiner von ?] Mantua verlangt kann er sich von dem Senator Grégoire[35] geben lassen. Von hier aus mit der Post zu schicken wuerde es zu viel Porto kosten. Dass meine liebe Nini sich fromm und gut auffuehrt macht mir viel Freude. Dafuer soll sie auch den Titel "*ha-ishshah ha-ẓenu'ah weha-ḥasidah*"[36] erhalten sobald sie, so Gott will, herkommt, ungeachtet mein Koerper weit von ihr getrennt ist, so ist mein Geist doch fast bestaendig auf Euch, meine Lieben.

---

[29] Auguste Dorothea, sister of the Duke of Brunswick, was a friend of Jacobson. On Wednesday, October 8th, the Princess Auguste Dorothea had given a "surprise party" to placate Jacobson who wanted to leave the service of the Duke, her brother. The following day, Thursday, the 9th, Jacobson invited the Princess to inspect the Seesen school.

[30] The Assembly here referred to is the Assembly of Jewish Notables which first met July 26, 1806 apparently "to devise means whereby useful occupations might be made more general among the Jews but in reality to question the representatives of the Jews concerning the moral character of the Mosaic law" *JE.* France, Vol. V. p. 468. The German, Hebrew and French materials that Schottlaender received probably refer to the minutes of the Assembly dealing with the 12 questions proposed by Napoleon to the assembled Jewish notables. These questions may be found in [Tama] *Organisation*, p. 132. The president of the Assembly was Abraham Furtado of Bordeaux.

---

[31] Although Schottlaender thought that the French Jews did not want to influence other Jewries, the Austrian Emperor and his bureaucrats were almost panic stricken. They thought that Napoleon was attempting to incite the Jews of the Hapsburg Empire to revolt, and instituted a rigid censorship, surveillance, and frontier control of Jews going to and coming from France. Cf. Gelber, N. M. La Police Autrichienne et le Sanhédrin de Napoleon. *REJ*. Vol. 83. 1927. pp. 1ff.

[32] As Elbogen has so clearly pointed out in "Die Bezeichnung, 'juedische Nation,'" (*MGWJ*. Vol. 63. 1919. pp. 200–208) this word here means simply the Jewish group and is devoid of any present day nationalistic connotation.

[33] Hebrew name of the holyday of "Rejoicing of the Law." It usually falls in late September or early October.

[34] Benjamin and Lorch were from Mayence and while members of the Assembly had to return home occasionally and take care of their business affairs. Cf. Anchel, pp. 140–141.

[35] The rabbi of Mantua was Abraham de Cologna who was both a member of the Assembly and the Sanhedrin in 1806–1807. It is difficult to determine what work of Schottlaender is here meant. See the bibliography of Schottlaender's works till 1806 in Note 4. Senator Grégoire is the well known Abbé, the French liberal, and friend of Jewish emancipation.

Ich versetze mich oft in Gedanken an ihren Tisch und es ist mir als wenn ich Euch alle vor mir sehe und auch reden hoere. Ist die Witterung bei Euch noch so schoen wie hier? Geht Ihr sonst . . . ? Sitzt Ihr noch zuweilen auf dem Boulevard? Besucht Ihr zuweilen das Theater? Ist meine liebe Lalotte und meine gute Fenny noch recht fleissig? Ist meine Nini noch so auffahrend und . . . gegen . . . Besucht Euch der Onkel *Shemu'el* recht oft? Alle diese und noch mehrere Fragen wuensche ich beantwortet zu sehen, denn alles was Sie und unsere liebe Familie betrifft ist von grossem Interesse fuer Euren Freund

Benedict Schottlaender.

Ihrer braven lieben Frau, unserer guten Grossmutter, besonders meinen lieben Cousinen Fenny und Lalotte empfehle ich mich bestens. Je vous cherche, je vous désire, mes chéris et aimables enfants et je ne vous trouve pas. Je voudrais vous avoir seulement pendant un quart d'heure chez moi pour vous serrer à mon coeur & vous dire combien je vous aime, mais Paris est effroiablement loin d'ici, cela n'est pas possible, soyez persuadés pourtant mes chères enfants, que je pense toujours à vous. Soyez sages, vertueuses attentives à vos devoires, ne faites pas de chagrin à vos parents et je ne cesseraì jamais d'être ami sincère

B. Schottlaender.

* * *

Meine liebe gute Nini.

Ich habe Deine zwei Briefe mit unaussprechlichem Vergnuegen erhalten. Ich ersehe daraus, dass Du von der Krankheit voellig hergestellt bist, Dich Gottlob wohl und munter befindest und mich noch nicht vergessen hast. Doch musst Du nicht glauben, meine Liebe, dass ich je daran gezweifelt habe, dazu kenne ich Dein Herz zu gut. Ich bin vielmehr ueberzeugt, dass Du mich oft an Deine Seite wuenschest und es laengst bereut haben wirst bei meiner Anwesenheit mir zuweilen Verdruss gemacht zu haben. Wir Maenner sind nicht durch Thraenen, Starrsinn und einem despotischen Je ne veux pas zu regieren, das empoert ihr maennliches Gefuehl und macht sie nur desto eigensinniger. Die Frau welche ihren Mann beherrschen will muss ganz andere Waffen dazu gebrauchen die ihrem Geschlechte angemessener und daher desto wirksamer sind. Ich meine naemlich zuvorkommende Gefaelligkeit, Bescheidenheit in ihrem Reden und Thun. Eine sanfte liebevolle Behandlung gegen alle die sie umgeben, Selbstbeherrschung und Aufopferung ihrer eigenen Vergnuegungen um dem Manne Freude zu machen, mit solchen Waffen ist bei einem Manne von rechtschaffener Denkungsart alles auszurichten. Du siehst, meine Liebe, welches Zutrauen ich zu Dir habe, da ich Dir selbst die Waffen in die Haende gebe womit Du mich ueberwinden sollst. Apprenez à prendre ces armes et vous serez invincible, ma chère.

---

[36] Hebrew: The modest and pious woman.

Meine Geschaefte rufen mich ab. Ich muss schliessen. Naechstens sollst Du wieder ganz allein einen grossen Brief von mir haben; lebe wohl meine liebe gute Nini. Ich druecke Dich an mein Herz, das mit voller Liebe fuer Dich schlaegt. Noch einige Monate, dann bleiben wir zusammen. Denke fleissig an mich, schreibe bald wieder Deinem treusten Freund

Benedict Schottlaender.

Les deux pendules ne sont pas encore arrivés.

* * *

Meine liebe Mutter.

Ich moechte gern einen besonderen Brief schreiben, aber teils die Furcht vor dem Postgeld, teils auch der Mangel an Zeit laesst dies nicht zu. Unsere Familie machen ja un coeur und eine Seele aus. Es wird Ihnen also gleichviel sein wenn ich an alle zusammen auf einen Brief schreibe. Dass Sie Ihr Versprechen gehalten und gleich nach meiner Abreise mir nach Mainz geschrieben haben, davon habe ich mich nachher ueberzeugt. Nicht Sie, sondern die Post war Schuld, dass ich den Brief erst nach meiner Herkunft erhielt. Ich bitte also wegen meiner Ihnen gemachten Vorwuerfe recht sehr um Verzeihung.

Dass Sie meine Angebote angenommen und nun an der Seite

Ihrer und meiner lieben Nini hier zu leben beschlossen haben, freut mich sehr. Ich wuensche dass Sie mir schreiben was Sie an Hausgeraeten mitzubringen gedenken damit ich noch bei Zeiten mich darnach richten kann. Das Beste waere wenn Sie wenigstens einen Monat vor *Zeman Ḥatunah*[37] herkommen, damit Sie sich Alles nach Ihrem eigenen Gutduenken einrichten lassen. Adieu, ma chère mère. Gott erhalte Sie gesund, und bringe Sie so Gott will, bald zu Ihrem Sie schaetzenden Sohn

Bendit Schottlaender.

J'ai fait à M. Fless une bonne acquisition, c'est homme bien honnête plein de zèle et de probité, je me félicite de l'avoir pris chez moi et j'en remercie M. Elkan[38] de me l'avoir recommandé. Le petit Josephle m'est aussi de grand utilité. Il n'a plus le temp de dormir comme à Paris, mais il se porte à merveille et ne demande pas mieux. Tout le monde s'amuse avec lui, il est toujours gai et enjoué, je prie M. Trenell d'avoir la bonté en passant d'hotel d'Ambassade de vouloir bien en informer ses parents et leur donner de ses nouvelles.

IV A

Seesen 7. Nov. 1806.

Meine liebe gute Nini.

Ich habe Deinen lieben Brief vom 24ten richtig erhalten. Wenn ich Dir durch mein Schreiben Verdruss gemacht habe, so bitte ich Dich tausendmal um Verzeihung. Meine Absicht war bloss Dich auf Deine Fehler aufmerksam zu machen. Du musst es also als eine bittere Medizin betrachten die man sich gefallen laesst, weil man weiss, dass die Wirkung davon suess ist. Ich meinerseits habe auch Fehler genug, dass weiss ich sehr gut, denn vollkommen ist kein Mensch. Indessen wir wollen einer mit dem anderen Nachsicht haben und uns gegenseitig zu verbessern suchen. Es war also nicht so boese gemeint, meine liebe gute Nini. Du bist mir mit allen Deinen kleinen Maengeln und . . . doch lieber als alle Schaetze der Welt und ich werde mein ganzes

---

[37] Hebrew: Date of the marriage.

[38] This Elkan may be Meir Elkan (Meyer b. Elhanan Fuerth) a German writer and teacher of the early 19th century.

Leben dazu anwenden, dir Freude und Vergnuegen zu machen und werde nur dann froh sein wenn ich Dich gluecklich und zufrieden sehe. Glaube mir, liebe Nini, es vergeht kein Augenblick, wo ich nicht an Dich denke und Dich zu mir her wuensche. Die zwei Monate die ich von Dir getrennt bin, kommen mir als ein Jahrhundert vor. Bei jeder Sache die ich unternehme denke ich immer, wenn doch meine liebe Nini und meine gute Mutter Charlotte hier waeren, wie gluecklich wuerde ich sein.

* * *

Liebe Nini.

Wenn Du meine Empfindungen mit mir theilst, wenn Du eben das gegen mich fuehlst, was ich in meinem Herzen fuer Dich fuehle, sag' mir wie ist est moeglich, dass Du mit solcher Gleichgueltigkeit von mir getrennt leben kannst? Was haelt Dich ab, Deine Herkunft zu beschleunigen? Glaubst Du etwa dass mir daran gelegen ist, dass Du viele Sachen und Geraete herbringst? Da wuerdest Du mir wahrlich grosses Unrecht thun. Ich liebe Dich allein mit allem Noethigen im Ueberfluss zu versorgen und was mein ist ist auch Dein. Warum schreibst Du mir solch kurze Briefe? Ich moechte so gern wissen was Du machst. Womit Du Dir die Zeit vertreibst? Kurz jede Kleinigkeit die Dich betrifft, ist mir wichtig und schaetzbar. Schreibe mir wenn es Dir moeglich ist, alle Tage, das Porto bezahle ich mit Freuden. Denn das ist ja mein einziger Trost seitdem ich von Dir getrennt bin. Waere Paris nicht so schrecklich weit von hier und waeren jetzt nicht solche unruhige kritische Zeiten, ich haette mich laengst aufgemacht und waere zu Dir gekommen. Aber das geht nun nicht. Wir sind . . . eben so gut Franzosen als Ihr, der Kaiser hat das Braunschweigische Land in Besitz genommen. In der Residenz Braunschweig liegen 500 Chasseurs die sich sehr gut auffuehren.

Hier in der ganzen Gegend herum haben die Franzosen schrecklich gewirtschaftet, gepluendert, geschaendet und geraubt. Wir haben Gottlob hier nichts von Krieg empfunden, ausser dass das hiesige Staedtchen fuer die Preussen viel Getreide liefern musste, bis jetzt haben die Franzosen von hiesiger Stadt noch nichts gefordert, aus Vorsicht und . . . habe ich an unsere Tante Benjamin noch nichts [sic] geschrieben und sie ersucht bei der

Kaiserin auszuwirken, dass die hiesige Stadt von Kontributionen befreit werde.[39] Auch an den Praefekten von Mainz habe ich das nochmals geschrieben. Hilft's nicht, so schadet es wenigstens nicht. Die vorige Woche hat Monsieur Dufour, Lieutenant du fre[?] Régiment de dragone à cheval bei mir Abendbrot gegessen und war mit der hiesigen Einrichtung des hiesigen Institutes ungemein zufrieden, hat auch versprochen d'en rendre compte avantageux à Monsieur Malraison S. Inspekteur aux revenus chargé de mission spéciale dans le Duché de Brunswick. Wir haben wie Du leicht denken kannst, viel von Dir und unserer Familie gesprochen. Wenn Du, meine Liebe, jetzt herkommst, so kommst Du also nach Frankreich und bist also wie zu Hause. Gruesse mir Deinen lieben Vater und Deinen Bruder meinetwegen viel tausend mal, auch à ta chère amie Babet n'oubliez pas de faire mes compliments aussi qu' à tous ceux qui se souviennent encore de moi. J'attends avec impatience votre réponse, ma chère et aimable Nini, je vous embrasse de tout mon coeur et suis pour la vie ton fidèle ami.

B. Schottlaender.

Dis moi, ma chère, si tu comprends tout ce que j'écrive en allemand autrement je vous écrirai toujours français, si mon Jzargon vous plaise mieux.

B

B'H Seesen Yom 6 'E. Sh. Ḳ. 26 Ḥeshwan 567 L'[40]
d. 7t Nov. 1806.
Mein lieber Freund und Onkel Trenell!

Ich habe Ihr liebes Schreiben vom 24t Okt. wie immer mit viel Vergnuegen erhalten und mich herzlich gefreut dass Sie und all die Ihrigen gesund und wohl sind, und dass Sie noch oft an mich denken. Ich meinerseits habe Sie auch noch keinen Augenblick vergessen. Ich traueme mich noch oft nach Ihrem Buergertisch hin, und wuensche ich koennte einmal so hinfliegen. Was Sie an meiner lieben Nini thun wird Ihnen gewiss der liebe Gott vergelten und Ihnen an Ihre liebe Kinder viele Freude erleben lassen. Wenn ich meiner lieben Nini zuweilen etwas Unangenehmes schreibe, so geschieht es gewiss aus keiner Absicht als um nach unserer Vereinigung nichts als Angenehmes ihr sagen zu koennen. Sie soll . . . schon mit mir zufrieden sein, wir werden uns schon vertragen und wenn sie je Thraenen vergiessen wird, so sollen es, wills Gott, keine andere als Freudenthraenen sein. Wie gerne ich's sehen moechte wenn Sie und Ihre liebe Frau zu meiner *Ḥatunah*[41] herkaemen, dass brauch ich Ihnen nicht zu sagen. Unsere Korrespondenz werde ich gewiss immer fortsetzen und Ihnen oft von unserem Glueck Nachricht geben. Zu der Ankunft des neuen Onkels gratuliere ich von Herzen. Ich bedauere nur, dass ich ihn nicht habe kennen lernen. Mit Onkel *Shemu'el* bin ich boese dass er mir gar nicht schreibt. Was die Ausstaffierung von Nini betrifft, so ist mir es sehr gleichgueltig. Ich bekuemmere mich um die Moden nicht viel. Was in Paris Mode ist, ist hier auch Mode. Paris hat immer als Muster fuer Deutschland gedient. Wenn Nini und Mama Charlotte nur gesund und wohlbehalten herkommen, so koennen sie meinetwegen allen Plunder zuruecklassen. Sie koennen sich meinetwegen machen was sie wollen, und ihre Wirtschaft einrichten nach ihrem eigenem Gutduenken. Gruessen Sie mir Ihre liebe gute Frau und Ihre . . . Fenny . . . Lalotte wie auch meine gute Grossmutter meinen . . . lieben braven Onkel *R. Ya'aḳob*[42] . . . und schreiben Sie bald . . . Verwandten

---

[39] By decree issued by Napoleon at Wittenberg October 23, 1806, the Dukes of Brunswick lost their territory. The occupation of the Brunswick Duchy by the French in 1806 is reflected also in the diary of Itzig Behrend. Cohen, Magnus. Unsere Familien Chronik. *Jahrbuch fuer Juedische Geschichte und Literatur.* 1909. p. 119. Aunt Benjamin is probably the wife of Jacob Benjamin of Mayence. Benjamin as an army contractor no doubt had influence with the authorities.

[40] Hebrew: With the help of God. Seesen. Friday. Eve of the Holy Sabbath. [*'Ereb Shabbat Ḳodesh*] 26th of Ḥeshwan. 567 according to the shorter reckoning.

Bendet Schottlaender.

Schicken Sie mir doch gefaelligst die Aufforderung von den Sanhedrin.[43] Ich habe Ihnen noch so viel zu schreiben aber es muss auf ein andermal bleiben.

---

[41] Hebrew: Marriage.

[42] Rab Ya'akob here is probably the Uncle Jacob Benjamin.

[43] At the session of the Assembly on the 23rd of September 1806, it was decided to issue an address in Hebrew, French and German to the European

[On opposite side of this same letter]:
Ma chère Maman Charlotte! Vous ne pouvez vous imaginer combien je désire être auprès de vous & ma chère Nini, il ne se passe pas une heure, oui, il ne se passe un moment où je ne pense à vous, tout ce que je fais ou tout ce que j'arrange dans le ménage je me demande toujours que est ce que Maman Charlotte en dirait si elle étoit ici, si vous m'aimez si vous êtes résolu de vivre avec nous de Grâce hâtez votre depart. Que est ce que vous arrête à Paris? Vous trouverez ici un coeur qui vous estime qui vous reverre, & je empresserai de rendre votre séjour aussi agréable qu'il est possible & vous pouvez arranger toutes choses selon votre goût, au milieu d'un grand foule des hommes je me sens si isolé-réfléchissez en ma chère Maman & n'oubliez pas votre fils

B. Schottlander

[franking date]: [addressed]:
A Mademoiselle
Therèse Francq
Novembre Trenelle vieille rue du Temple No. 82
15 [?] à Paris.
1806 Franco-Mayence

V

B'H Seesen Yom 2 16 Kislew 567 L'[44]
d. 24t Nov. 1806.
Meine liebe gute Nini!

Ich habe eine ganze Menge baierische und franzoesische Officiere bei mir die hier Rasttag halten und nach Braunschweig gehen und unterdessen sich hier in dem Institut[45] die Zeit vertrei-

---

synagogues inviting them to send delegates to the meeting of the Great Sanhedrin called for October 20, 1806. The circular appeal in French is found on page 264ff., of]Tama] *Organisation*, and on p. 270 of *Transactions of the Parisian Sanhedrin*. Translated . . . with a Preface . . . by F. D. Kirwan. London. 1807.

[44] Hebrew: With the help of God. Seesen. Monday. 16th of Kislew. 567 according to the shorter reckoning. Monday, however, the 24th of November, 1806, was the 13th of Kislew, not the 16th.

[45] This is, of course, the Jacobson-School at Seesen.

ben. Du kannst also leicht denken, dass ich alle Haende voll zu thun habe. Um dich aber nicht in Unruhe wegen meiner zu setzen, so will ich doch in aller Geschwindigkeit Dir sagen, dass ich Deinen lieben Brief richtig erhalten habe und mich gefreuet dass Du gesund und wohl bist, welches ich von meiner Seite Gottlob auch versicheren kann. Wir muessen dem allguetigen Gott besonders danken, dass Er alle Kriegsunruhen von der hiesigen Stadt abgewendet hat. Wir haben bis jetzt von dem Kriege wenig oder gar nichts empfunden waehrend in der hiesigen Gegend viele Excesse begangen wurden. Gott wird weiter hueten. Ich habe mir bisher geschmeichelt, dass Du doch vielleicht bald herkommen wirst, aber Dein letzter Brief benimmt mir alle Hoffnung. Ich muss mich schon in Geduld ergeben. Es scheint mir, dass Du noch ein bischen boese auf mich bist. Thue das nicht, liebe Nini. Meine Absicht war es wahrlich nicht Dich zu beleidigen. Als der Brief fort war tat es mir gleich leid, dass ich Dir sowas geschrieben hatte. Sei wieder gut, meine liebe Nini. Du weist dass ich's herzlich gut mit Dir meine. Mein Cousin von dem ich Dir geschrieben habe denkt jetzt ganz anders von Dir und wird Dir naechstens schreiben. Er ist wieder in Hamburg, wo nun auch Franzosen eingerueckt sind.[46] Auch von meinem Bruder, der in Berlin Kaufmann ist, sollst Du naechstens Brief haben. Er hat mir versprochen auf meine *Ḥatunah* herzukommen. Auch mein Cousin wird wahrscheinlich unsre Hochzeit beiwohnen. Beide sind gute edle Menschen, die Dir gewiss gefallen werden. Mein Bruder ist ueberdies ein schoener wohlgebildeter junger Mann. Vielleicht kommt auch mein Onkel *R. Yehuda* Danziger aus Berlin her. Von meiner Familie aus Danzig glaube ich nicht das welche herkommen werden, weil es gar zu weit von hier ist. Die Kriegsunruhen thuen dem Handel viel Schaden. Viele Personen aus meiner Familie leiden sehr darunter, indessen wir wollen hoffen dass es nicht lange dauern wird. Wie geht es Dir sonst, meine liebe gute Nini? Denkst Du auch fleissig an mich? Wenn ich Dich nur auf einige Augenblicke sprechen koennte. Ich habe Dir so viel zu sagen. Mit dem leidigen Schreiben ist es doch nichts. Ich werde eben abgerufen. Adieu, meine liebe gute Nini, leb wohl und schreib mir bald wieder. Ich bin ewig Dein Dich zaertlich liebender

---

[46] The French occupied Hamburg the middle of November, 1806.

Bendet Schottlaender.

* * *

Meine liebe Mutter! Ich gruesse Sie viel tausend mal und ich bitte den lieben Gott dass er Sie in seinen besonderen Schutz nehme und gesund und munter erhalte.

* * *

Mein lieber Onkel Trenell!

Ich habe Ihre Strafpredigt mit Aufmerksamkeit gelesen, und finde dass Sie im Allgemeinen recht haben. Doch glaube ich dass Sie meine Absicht nicht recht verstanden haben. Es gibt keine Regel ohne Ausnahme. Ein andermal will ich mich deutlicher erklaeren.

Meiner lieben Tante Trenell empfehle ich mich bestens, sowie meinen guten lieben Cousinen Lalotte und Fenny, *ubifraṭ*,[47] meiner guten wuerdigen Grossmama.

* * *

Liebe Nini. Gruesse mir den Onkel *Shemu'el* meinetwegen vielmal. Ich habe seinen schoenen Brief richtig erhalten. Er hat mir viel Freude gemacht. Sollte H' Lorch wieder da sein, empfehle mich ihm gleichfalls, sowie auch an Monsieur Friedberg. Onkel *Binyamin* ist wohl noch im Hauptquartier.[48] Deinen anderen Onkel den Schiffscapitain den ich noch nicht zu kennen die Ehre habe, bitte mich ebenfalls unbekannter Weise zu empfehlen so wie an alle andere gute Freunde, vorzueglich an Deine Babet, die Dich dann noch oft besuchen wird, hoffe ich. Wegen der *Yerushah*[49] von Fenny's Lehrer habe ich schon einige mal geschrieben aber keine Antwort erhalten. Bei den jetzigen Kriegsunruhen wird wohl nichts zu machen sein. Er muss Geduld haben. Wenn

---

[47] Hebrew: and particularly.

[48] Lorch, Friedberg and Benjamin, though excused for business purposes, had to return to the sessions of the Assembly of Notables which continued from July 26, 1806 to February 1807. Benjamin as an army contractor was, no doubt, kept busy at Headquarters.

[49] Hebrew: Legacy.

Ihr, *IY'H*[50] herkommt, so bringt mir nochmals eine Abschrift von dem Testament nebst einer richtigen Adresse mit, dann wollen wir sehen was zu machen ist.

[franking date]: [addressed]:
Mademoiselle
Decembre Therese Franq chez Monsieur M. g. Trenelle
7 vieille rue du Temple No. 82
1806 à Paris.
Franco Mayence

VI-A

Seesen 1. Dez. 1806.
Meine liebe gute Nini.

Deinen lieben Brief vom 16. vorigen Monats erhalte ich in diesem Augenblick. Unmoeglich kann ich Dir die Freude beschreiben die mir dieses Schreiben verursacht. Ich sehe daraus, dass Du mich ein bischen genauer kennen zu lernen anfaengst und es auch allmaehlig einsiehst, welch ein Glueck es ist einen Mann gefunden zu haben, der es treu und redlich mit Dir meint und nichts verlangt als ein liebevolles Herz und zuvorkommende Guete und Sanftmuht. Ich habe nie an deinem guten Herzen gezweifelt und bin ueberzeugt dass je laenger wir zusammen leben werden desto inniger werden unsere Herzen sich vereinigen und wir werden einer in dem anderen gluecklich sein. Dieser Gedanke beschaeftigt mich jetzt bestaendig. Dein Bild steht bestaendig vor mir und es ist mir zuweilen, als wenn ich noch in Paris in unserm lieben Trenellzimmer bei Dir saesse und Dich sprechen hoerte. Ich danke Dir auch recht fuer Lebensbeschreibung. Ich weis doch nun womit Du Dich in jeder Stunde des Tages beschaeftigst. Seit meiner Herkunft aus Paris lebe ich auch sehr stille und eingezogen, gehe fast die ganze Woche nicht aus, ausser Sonntag Abend, wo ich in unsern sogenannten Club oder Grande Société gehe; das ist eine geschlossene Gesellschaft von den Vornehmsten hiesiger Stadt, wovon meine Wenigkeit auch ein Mitglied ist. Man kommt da um 5 Uhr des Abds. zusammen. Die Herren haben ein besonderes Zimmer und die Damen auch. Da wird gespielt, gesprochen usw. bis um 8 Uhr. Dann kommen die Herren und die Damen in einem gemeinsamen Zimmer zum Abendessen. Das ist auf folgende Weise eingerichtet. In der Mitte des Zimmers steht eine grosse Tafel worauf allerlei kalte Speisen und Fruechte aufgetragen werden, wovon jeder nach Belieben gegen Bezahlung von einem franzoesischen Livre ungefaehr essen kann. Um diesen grossen Tisch aber sind lauter kleine Tische woran diejenigen sitzen, die sich ihr Abendbrot von zu Hause hinbringen lassen. Diese verschiedenen Gruppen von Familien machen einen schoenen point de vue. Wenn wir so Gott will verheiratet sind, lassen wir uns auch Souper hinbringen und essen mit unserer lieben Mutter zusammen. Bis jetzt habe ich in dieser Gesellschaft nie etwas mehr als ein bischen Butterbrot gegessen.[51] Nach dem Essen wird wieder gespielt, naemlich, L'hombre Weiss und Schwarz. Ich, der ich keine Karten spiele, amuesiere mich mit Damenbrett, zuweilen werden auch gesellschaftliche Spiele gespielt. Dies dauert bis um zehn Uhr, dann geht jeder nach Hause. Diese Gesellschaft besteht aus etlichen 30 Mitgliedern ohne das weibliche schoene Geschlecht zu rechnen, und ich kann sagen, dass nicht einer darunter ist, der mir nicht gut waere; es sind auch fast lauter durchgehend gute edle Menschen. Es sind viele adlige darunter, aber man merkt keinen Unterschied zwischen dem Adel und Buerger. Hier herrscht Gleichheit und Freiheit. Das ist also mein einziges Vergnuegen und Erholung, denn die ganze Woche ueber bleib ich bei meinen Geschaeften, schreibe, rechne, sehe dass alles nach Recht und Ordnung gehet und wenn ich ein bischen Zeit uebrig habe lese ich ein nuetzliches Buch, nehme ein Prischen Tabak und denke an die Zukunft.

---

[50] Hebrew: *Im yirẓeh ha-Shem*: God willing.

Du siehst also, liebe Nini, dass wir in unserer Lebensart beinahe ueberein kommen, wenn nur erst noch ein paar Monate vorbei waeren. Ich hatte es mir nicht leicht vorgestellt dass man sich an einem so kleinen Wesen so attachieren kann. Wenn ich dergleichen noch von anderen gesehen und gehoert habe, so habe ich darueber gelacht, und es fuer eine Thorheit gehalten. Jetzt bin ich dafuer bestraft. Nach der Versicherung von unserem lieben Onkel Trenell kann es sein, dass Ihr *Rosh Ḥodesh Shebaṭ*[52] von dort abreist. Schreib mir doch ja bald, wenn die Antwort von Onkel Benjamin kommt, damit ich mich im Voraus darauf freuen kann. Liebe Nini, Du weisst doch, dass Onkel Benjamin seinen Sohn hierher geben will. Ich kann ihn aber aus verschiedenen Ursachen nicht hernehmen. Erstens ist es wider die Schulgesetze ein Kind mit einem koerperlichen Fehler anzunehmen, zweitens muss ich Dir gestehen, dass ich so einen Menschen nicht gut vor mir sehen kann. Es ruehrt mich zu sehr und ich waere auch in bestaendiger Angst, dass er sich beim heraufgehen der Treppen einen Schaden thun wird, es wuerde mir also mein Leben verbittern, wenn ich diesen jungen Menschen hernehme und das denke ich, bin ich doch nicht schuldig zu thun. Und dann bin ich in Verlegenheit, wie ich dies dem guten Onkel Benjamin dem ich gern alles zu Gefallen thun moechte abschlagen soll. Ich bitte Dich daher mit unserer lieben Mutter zu sprechen, dass sie es ihm mit guter Manier vortraegt. Das hat aber Zeit bis ihr, wills Gott, zur Reise fertig seid. Hoer einmal, liebe Nini, ich habe seit meiner Zurueckkunft von Paris verschiedene franzoesische Buecher gelesen. Ich lege Dir hier das Verzeichnis bei, thue mir den Gefallen und sehe zu, dass Du sie auch bekommst. Ich weiss gewiss sie werden Dir Vergnuegen machen und dann koennen wir bei Deiner Herkunft davon sprechen. Ein Lehrer der Mathematik in meiner Schule, der mein Gesellschafter und Tischgenosse ist, laesst sie mir immer von Braunschweig, wo ein franzoesischer Buchhaendler wohnt, herkommen. Wenn Du, wills Gott, hier bei mir bist, dann wollen wir zusammen lesen, nicht wahr? liebe Nini? und wenn unsere kleine Maman sich gut auffuehrt bekommt sie auch . . .

---

[51] Like Jacobson and many other Reform Jews of his day Schottlaender observed the dietary and other ritual laws.

Liebe Nini, willst Du mir eine Freude noch machen, so lege in dem Brief den Du mir naechstens schreiben willst eine kleine Locke von Deinem Haare bei. Du kannst sie so klein nehmen wie Du willst und sie mit einem seidenen Faden zusammenbinden. Du musst aber ja keinem was davon sagen, allenfalls unserer lieben Mutter, so schadet es nicht, andere aber die es nicht interessiert, koennten es laecherlich finden und auslachen lasse ich mich nicht gern. Adieu meine Liebe, ich habe heute zu thun, naechstens schreibe ich Dir mehr, leb wohl und vergnuegt. Ich bin in Gedanken an mein Herz und bin Dein treuer Freund,

---

[52] Hebrew: The first day of the month, Shebaṭ. This fell on the 10th of January, 1807.

Bendit Schottlaender.

* * *

Liebe Mutter Charlotte.

Wir wollen einmal ein deutsches Woertchen mit einander sprechen. Sie schreiben mir Sie koennen nicht eher herkommen . . . bis Sie einen haben der Sie paesendiert [sic]. Ich sehe die Notwendigkeit nicht ein. Wenn . . . so braucht ja nicht gleich zu sein, . . . solange schieben wir die [Reise] auf, unterdessen koennen wir alles nach Ihrem Gefallen einrichten. Wenn Sie sich ein gute Koechin mitbringen, so haben Sie Reisegesellschaft auch. Doch ich ueberlasse alles dies Ihrer Einsicht und will mich, wenn es so sein muss, noch gedulden. Machen Sie alle Sachen mit Bequemlichkeit in Ordnung, nehmen Sie sich Zeit dazu und kommen nur gesund und wohlauf zu mir her, dann bin ich zufrieden.

Ihr treuer Sohn
Bendit Schottlaender.

Je rend mille grace à mon beau-frère Francq pour la charmante et jolie lettre dont il a eu la bonté de m'honorer. Il peut être persuadé que je prendrai toujours le plus vif intérêt à tout ce qui concerne sa personne que est le frère de ma bien aimée et que je serai charmé d'apprendre souvent de ses nouvelles. Salut cordial à votre cher pére France. [?]

* * *

B

Seesen d. lt Dec. 1806.

Mein lieber Freund und Onkel Trenell.

Ihr lieber Brief in welchem Ihr gutes biederes Herz gar nicht zu verkennen ist, hat mir wie immer viel Freude gemacht. Von *Milḥamah*[53] wissen wir *T'L*[54] bis jetzt nicht viel, ausser das

---

[53] Hebrew: War.

[54] Hebrew: *Tehillah le'El*: Thank God!

Kontributionsgeld, welches auferlegt worden, es betraegt fuenf Millionen livre français. Fuer so ein kleines Laendchen wie Braunschweig ist das freilich ein bischen viel. Auch werden allen *Soḥerim*[55] die englische *Seḥorah*[56] weggenommen, das macht auch manchen arm. *HSH'Y*[57] gebe nur dass es dabei bleibt, dann ist es noch zum aushalten. Dass der *MU'M besham*[58] auch nicht gross ist will ich gerne glauben. Ein allgemeiner Friede waere gewiss zu wuenschen. Wir wollen indessen das Beste hoffen. Dass der neue Onkel eine so schoene Beute von Kastor-Hauete mitgebracht hat, freut mich, ich habe gar nicht gewusst dass er schon verheiratet ist. Wo wohnt er denn eigentlich? Gruessen Sie ihn meinetwegen vielmal wenn Sie an ihn schreiben. Sein freundschaftlicher Gruss hat mir viel Vergnuegen gemacht. Dass Sie an Onkel Benjamin geschrieben dafuer danke ich recht sehr, wenn Sie *Teshubah*[59] erhalten geben Sie mir Nachricht. Die Bulletins der grossen Armee[60] bekomme ich alle Posttag von Berlin aus zugeschickt. Wie lieb es mir waere, wenn Sie mit auf meine *Ḥatunah LMZ'T*[61] herkaemen, brauch ich erst nicht zu sagen. Sehen Sie zu, vielleicht geht es doch. Dass ich Sie oft mit meinen Briefen belaestigen werde, daran brauchen Sie nicht zu zweifeln. Ihre Schilderung des grossen Sanhedrin ist wirklich nach dem Leben getroffen. Ich bin wirklich neugierig was eigentlich die Sanhedrin vornehmen werden.[62] Zu thun waere freilich genug, aber dann muesste ein grosser *lamdan*[63] und zugleich ein geschickter Mann an der Spitze stehen. Wo die beiden Sachen nicht zusammen sind, was kann daraus werden? Wenn was vorfallen sollte theilen Sie mir's mit, darauf verlasse ich mich. Dass meine liebe Nini wieder mit mir ausgesoehnt ist macht mir plaisir. Was ich Ihnen sagen wollte ist also nicht mehr noetig. Vertreten Sie immer Vaterstelle . . . ihr mit Raht und That zur Hand, so wird es der liebe Gott Ihnen bei Ihre liebe Kinder vergelten und Ihnen viele Freude an Ihre gute Fenny und Lalotte und an alle diejenige, welche noch vielleicht auf dem Wege sind, in vollem Masse schenken. Warum hat Ihr braves Weibchen mich diesmal nicht gruessen lassen und meine Grandmaman auch nicht? Ich wollte wohl wetten sie sind beide mit den Kindern in die Pension gegangen um ihre Komoedie spielen zu sehen. Ich wuensche ich waere da und haette sie auch beiwohnen koennen. Gruessen Sie mir die lieben Kinder Ihre liebe Frau und Grossmama viel mal. Die Komoedie welche die Kinder spielen ist mir nicht bekannt. Wenn Sie mir solche durch meine liebe Nini herschicken, wird es mir Freude machen. Schreiben Sie mir, ob sie ihre Sache gut gemacht haben. Unsern Onkel *Shemu'el* gruesse ich auch viel tausend mal. Sollte das nicht angehen dass er meine Leutchen herbegleitet kann er nicht auf einige Monat von seinem Amte abkommen? Wir haben bis jetzt noch immer Sommer gehabt. Wie sieht es in Paris aus? Ihr lieben Leutchen habt gewiss zu beten, dass es nicht kalt wird, denn Ihr muesst ja frieren bei Eurem Kamin bald von vorne, bald von hinten. Ich habe in Gedanken nicht gemerkt, dass das Papier schon voll ist, und haette noch lange so schwaetzen koennen, nun gute Nacht. Auf ein ander Mal mehr. *K'D D'SH*[64]

---

[55] Hebrew: Merchants.

[56] Hebrew: Wares.

[57] Hebrew: *Ha-Shem yitbarak*: God, May He be praised!

[58] Hebrew: *Massa uMattan beSham*: business conditions there.

[59] Hebrew: Answer.

[60] Napoleon entered Berlin October 27, 1806 and made it his headquarters while finishing the subjection of Prussia and preparing for the campaign against the Russians.

[61] Hebrew: *Ḥatunah leMazzal Tob*: The wedding, may it be a happy one.

[62] The Sanhedrin of rabbis and laymen did not begin its sessions until the 9th of February, 1807. The Sanhedrin was called by Napoleon to give official sanction to the stand taken by the Assembly on the 12 questions propounded to them by Napoleon.

[63] Hebrew: *Lamdan*: a rabbinic scholar. It is interesting to note that Schottlaender, who is very probably the "ghost writer" for Jacobson, does not think of his employer for this office although Jacobson was to occupy a

Bendet Schott.

* * *

---

somewhat similar position, 1808, in Westphalia as President of the Jewish Consistory there.

[64] Hebrew: *Koh dibre doresh shelomeka*: These are the words of him who greets you.

VII

B'H Seesen Yom 1 17 Ṭebet 567 LP'Ḳ[65]
d. 27t Dec. 1806.
Meine liebe gute Nini!

Nachdem ich mich beinahe drei Wochen abgehaermt und von einem Posttag auf den anderen immer vergeblich nach einem Briefe von Dir und den Unsrigen mich gesehnt habe erhalte ich gestern zu meiner innigsten Freude 2 Deiner lieben Briefe, naemlich vom 7t und dem 12t auf einmal, woraus ich mit Vergnuegen ersehe dass Du und alle unsere lieben Leutchen, Gott erhalte sie, gesund und munter sind, welches bei mir die Hauptsache ist. Alles Uebrige aber Nebensache welches ich jedoch nicht unbeantwortet lassen will. Also huebsch nach der Ordnung. Was den Onkel *Shemu'el* anbetrifft, so habe ich bis jetzt noch nichts von ihm gesehen oder gehoert. Es waere wirklich unverzeihlich, wenn er mir so nahe waere und doch nicht zu mir kaeme. Ich brauche Dir's wohl nicht zu sagen wie sehr ich mich auf seine Herkunft freue, indessen vielleicht geschieht es noch. Ich will es abwarten. Aus dem Schreiben unseres lieben Onkel Trenell erfahre ich, dass Du Dich auf den Ball in der Pension recht lustig gemacht hast. Warum schreibst Du mir gar nichts davon? Du weisst ja welchen Antheil ich an allem nehme was Dich betrifft. Erhitze Dich nur nicht zu sehr, meine liebe Nini, wenn Du tanzest. Mann kann leicht seiner Gesundheit schaden. Ich haette gewuenscht ich waere bei Dir gewesen und haette dieses kleine Fest mit beiwohnen koennen. Indessen die Zeit rueckt ja immer naeher, wo wir auf immer zusammenleben werden. Dass Onkel *Binyamin* noch nicht geschrieben hat, thut mir leid. Ich hoffe indessen dass ehe dieser Brief zu Dir kommt, schon ein Brief da sein wird. Gib mir nur bald Nachricht davon, damit ich endlich weiss, wenn Ihr von da abreist. Was den Sohn vom unseren Onkel *Binyamin* betrifft, so will ich sehen ob es moeglich zu machen ist. Ich glaube aber schwerlich dass es angehen wird, da es wider die Schulgesetze ist und Herr Jacobssohn es auch nicht gerne sehen wird. Uebrigens habe ich schon in meinem Vorigen meine Gruende geschrieben warum ich ihn nicht gerne hernehmen will. So viel ich einsehe wird dieser Knabe hier zu viel Verdruss Anlass geben. Wenn Ihr mir also folgen wollt, so lasst ihn weg. Ich thue zwar Dir und Deiner Mutter zu lieb alles was Ihr von mir verlangt, aber man muss auch an sich selbst nicht vergessen und nicht muthwilligerweise sein Leben verbittern. Selbsterhaltung ist die erste Pflicht. Ich spreche aus Erfahrung, da ich bestaendig unter Kinder lebe, und mich auf dergleichen verstehe. Ich sage also, noch einmal, lasset den Knaben huebsch zu Hause bei seiner lieben Mama, hier passt er nicht her. Wenn Ihr mir aber nicht folget, so habt Ihr's Euch selbst nachher zuzuschreiben was daraus entsteht. Ich sehe um Grunde auch nicht ein, was es fuer ein Glueck fuer ihn ist, wenn er herkommt. Er kann wenn er will, auch in Mainz[66] recht viel lernen, will er aber nicht so wird er hier eben so wenig, vielleicht noch weniger lernen als dort. Hier habt Ihr einen freundschaftlichen Raht und meine aufrichtige Meinung, machet nun was Ihr wollt. Ich denke wenn Du mir gut bist, so wirst Du alles zu vermeiden suchen was mir Verdruss und Kummer machen kann. Weiter brauche ich nichts zu sagen. Und nun kein Wort mehr davon.

---

[65] Hebrew: With the help of God. Seesen. Sunday. 17th of Ṭebet according to the shorter reckoning. But Sunday the 17th of Ṭebet, 1806, was the 28th of December, 1806, not the 27th. Probably Schottlaender dated the letter on the night of the 27th of December which is the beginning of the 17th of Ṭebet.

Dass Dir das Buch La Laitière gefallen hat freut mich, La Diligence[67] hat mir auch nicht sonderlich gefallen. Ich wuensche nur dass Du auch das dritte lesen moegest das wird Dir gewiss Vergnuegen machen. Fuer das versprochne Andenken von unserem lieben Onkel Trenell danke ich im voraus. Ob er gleich gar kein Andenken noethig hat, da sein Andenken in meinem Herzen ist.

---

[66] This was the child's home. Jacob Benjamin the father came from this city.

[67] These two plays are probably the following: *la Diligence de Lyon, ou les Prétensions bourgeoises*, comed. en 3 actes et en vers. Paris, Hugelet, 1802; the author is Michel Cubières de Palmezeaux (1752–1820). *La Laitière*, comédie-anecdot. en un acte, en prose, mêlée de vaudev. Paris, Perreault, 1806. The author is C. Henrion. d. 1808. This information has been kindly furnished to me by the Librarian of Congress.

Fuer deine Locke sage ich Dir den herzlichsten Dank. Es hat mich sehr angenehm ueberrascht als ich beim Eroeffnen des Briefes dieses mir theuere Geschenk erblickte. Es ist doch schon wenigstens etwas von meiner lieben Nini. Das Uebrige wird mit Gotteshilfe auch nachkommen. Dir uebrigens alles zu schreiben was ich empfinde, was ich denke halte ich fuer eine vergebliche Muehe da kalte Worte doch die Sprache des Herzens nicht auszudruecken vermoegen. Also, lieber alles verwahrt bis ich Dich hier bei mir habe. Dann wollen wir lieber muendlich ein Woertchen mit einander sprechen, nicht wahr meine Liebe? Leb also wohl, meine theure gute, Gott erhalte Dich gesund und munter und bringe Dich bald zu Deinem Dich liebenden

Freund Bendet Schottlaender.

* * *

Ma chere Maman Charlotte!

J'ai tant d'affaires aujourd'hui que je ne sais où comencer où finir cependant je ne puis m'empêcher à vous dire au moins ma chère Maman que je pense presque toujours à vous & que je ne désire plus ardement que de vous voir le plutôt possible chez moi alors je vous dirai de vive voix combien je suis de tout mon coeur votre fils

B. Schottlander.

Je fais bien des complimens à mon cher Père Franq & à mon frère ainsi que à toute notre famille surtout à Babet.

* * *

Mein lieber braver Onkel Trenelle.

Ich bin Ihnen auf zwei Briefe Antwort schuldig, und doch kann ich heute vieler Geschaefte halber mich nur kurze Zeit mit Ihnen unterhalten. Sie glauben nicht was fuer Vergnuegen mir Ihre treuherzige ungekuenstelte Briefe machen. Es ist mir immer im Lesen, als wenn Sie da vor mir stuenden und die Bewegungen dazu mit den Haenden machen. Unsre Korrespondenz muss auch nach meiner Verheiratung immer in Gange bleiben, denn Sie sind ein Mann nach meinem Herzen, *Ish Ẓaddiḳ Tamim*,[68] ohne

---

[68] Hebrew: a righteous and whole-hearted man. The phrase is from Genesis VI. 9.

Falschheit ohne Verstellung, gerade und bieder. Solche Leutchen mag ich gerne. Nun zur Beantwortung Ihrer Briefe. Was die *Milḥamah* betrifft, so muss ich Ihnen den *Emet*[69] sagen. Die *Shemu'ah*[70] will mir nicht recht gefallen. Weiter kann ich nichts sagen *ha-Zeman yaggid.*[71] *HSHY'T* gebe bald *Shalom*,[72] das ist alles was ich wuensche. Die Beschreibung der gegebenen Fête in der Pension Ihrer l'[73] Kinder hat mir Freude gemacht. Ich wollte ich waere bei Euch gewesen und haette Alles mit ansehen und anhoeren koennen. Fuer die mir mitgetheilte Sachen *min* Assemblée *B'Y*[74] danke ich Ihnen herzlich. Ich finde zwar nichts besondres darinnen, was ich nicht im Voraus gesagt und angerathen habe. Indessen macht es mir doch Freude zu sehen, dass man mein Raht befolgt hat. Ich bin nun neugierig, was die Sanhedrin machen werden. Sind denn die andren Deputierten schon alle wieder fort? Ich muss fuer heute schliessen. Gruessen Sir mir Ihre liebe Frau Ihre liebe Kinderchen meine liebe Fenny und Lalotte, meine wuerdige Grossmutter, den Onkel Capitaine so wie alle unsre Angehoerigen und erfreuen Sie bald wieder mit einem Schreiben Ihren treuen
Freund Bendet Schottlaender.

[franking date]: [addressed]:
Mademoiselle
[month not clear] Therese Francq chez Monsieur
7. L. Trenelle vieille rue du Temple No. 82
1807 à Paris.
Franco Mayence

* * *

---

[69] Hebrew: Truth.

[70] Hebrew: Rumor.

[71] Hebrew: Time will tell!

[72] Hebrew: May God, praised be He, bring peace speedily.

[73] l (ieben) abbreviation.

[74] Hebrew: *Min Assemblée Bene Yisra'el*: of the Israelitish Assembly i. e., the Assembly of Jewish Notables in Paris.

VIII

B'H Seesen Yom 5 13 Shebaṭ 567 L'[75]
d 22t Jan. 1807.
Meine liebe Nini!

Ich erhalte in diesem Augenblick Deinen lieben Brief vom 9t dieses und eile ihn sogleich zu beantworten. Dass Du in drei Wochen kein Brief von mir erhalten hast begreife ich nicht; da gewoehnlich der Brief doch nur 12 hoechstens 13 Tage auf dem Wege von hier nach Paris zuzubringen pflegt. Die Posten muessen jetzt sehr unordentlich gehen. Dem sei wie ihm wolle, so freue ich mich, meine liebe gute Nini, dass Du und all die Unsrigen gesund sind, und dass Ihr nun endlich Eure Abreise beschlossen habt. Ihr schreibt mir aber noch nicht an welchem Tag im Monat Ihr von dort abreisen werdet, auf welche Art Ihr diese Reise machen wollet, ob in einem eigenen Wagen oder mit der Diligence, und wen Ihr mit zur Gesellschaft nehmet, denn ohne eine Mannsperson werdet Ihr doch wahrscheinlich nicht reisen. Von dem allen sagtet Ihr mir nicht ein Wort und doch haette ich dies alles gerne gewusst. Dass der Onkel Benjamin nicht auf unsere Hochzeit kommen will, thut mir herzlich leid, ich will indessen an ihn schreiben, und da er nur 40 Stunden von hier entfernt ist, so hoffe ich, dass er sich noch zureden lassen wird. Zu der bestimmten Zeit kann nun einmal unsre Verbindung nicht gefeiert werden, da *R'Ḥ Adar*[76] schon vor der Thuer ist. Indessen das hat nichts zu bedeuten, wenn Ihr *IY'H* erst hier seid da wollen wir die Sache ueberlegen und alles nach Bequemlichkeit einrichten. Leb wohl, meine liebe gute Nini, noch eine kurze Zeit und wir sind auf ewig vereinigt und nichts als der Tod soll uns trennen, woran mit Gottes Hilfe erst in 60 Jahren zu denken ist. Ich erwarte bald wieder ein Schreiben von Dir und bin Dein Dich zaertlich liebender

Bendet Schottlaender.

---

[75] Hebrew: With the help of God. Seesen. Thursday. 13th of Shebaṭ. 567 according to the shorter reckoning.

[76] Hebrew: *Rosh Ḥodesh Adar*: the first day of the month Adar. The first of Adar in 1807 came on the 9th of February.

Gruesse mir unseren lieben Vater und Bruder viel tausend mal. Ich denke oft an beide. Ich wuensche ihnen alles erdenkliche Wohlergehen. Alle meine Freunde und Babet . . .

* * *

Liebe Mutter!

Mit inniger Freude habe ich die Nachricht in Ihrem lieben Brief vernommen, dass Sie nun bald von dort abreisen werden. Ich rechne darauf dass Sie in der Mitte Februar's hier eintreffen werden wenn Sie naemlich nach meinem Wunsch den ersten des Monats von dort abreisen. In diesem Falle aber werde Sie dieser Brief nicht mehr in Paris finden. Wenn mein lieber Freund H' Lorch meine an ihn gethane Bitte gewaehren und mit her auf meine *Ḥatunah* kaeme, wie unaussprechlich wuerde ich mich freuen. Sie schreiben mir noch ueber Ihre Reise so unbestimmt, als wenn noch ein Jahr dazu waere, und Sie wissen doch, dass es manche mal einige Wochen dauert, ehe ein Brief herkommt. Auf alle Faelle denke ich doch von Mainz aus Nachricht zu erhalten, wenn Ihr dort angekommen seid. Ich habe noch soviel zu schreiben, dass ich garnicht weiss wo ich anfangen noch enden soll. Ich will lieber alles lassen bis wir zusammen sind, da laesst sich in ¼ Stunde mehr sagen, als in zwei Stunden schreiben. Ich erwarte bald wieder Nachricht und bin Ihr treuer Sie schaetzender Sohn

Bendet Schottlaender.

* * *

Mein lieber braver Onkel Trenell!

Ich trete nun bald in den Stand der heiligen Ehe, wovon Sie ein Liedchen zu erzaehlen wissen. Ich bin willens bei Ihnen als erfahrner Praktikus in die Lehre zu gehen, und von Ihrer Erfahrung in diesem Fache zu profitieren. Schade nur, dass die Zeit so kurz dazu ist. Das Beste waere, Sie entschliessen sich und machen diese Reise mit hieher, da waeren wir auf einmal aus aller Noth geholfen. Wie sehr willkommen Sie mir sein werden, brauch ich wohl erst nicht zu sagen. In jedem Fall, bleiben Sie mein Freund und geben mir wenn auch nicht muendlich wenigstens schriftlich Ihren Raht. Meine liebe Nini wird gewiss das Gute nicht vergessen das Sie in Ihrem Hause genossen und es Ihnen einst Dank wissen dass Sie zuweilen in ihre kleine Verirrungen zurecht gewiesen haben, und ich werde ewig Ihr Schuldner dafuer bleiben.

Das versichert Ihnen Ihr Freund Bendet Schottlaender.

Ihrer lieben Frau die gute Grossmutter *LOY'Ṭ*[77] die lieben guten Kinderchen Fenny und Charlotte[78] und alle unsere Familie besonders das Schmollsche[79] Haus gruesse ich herzlich.

[franking date]: [addressed]:

Mademoiselle
Fevrier Mlle. Therese Francq chez
1 Monsieur M. Trenelle vieille rue du Temple No. 82
1807 à Paris.
Fr. Mayence.

IX

B'H Seesen Yom 5 19 A'R 567 L'[80]
d 25t Feb. 1807.

Meine liebe Nini!

Mit unaussprechlicher Freude ersehe ich aus Deinem lieben Brief dass Du Gott sei Dank gluecklich und wohlbehalten bei Deiner wuerdigen Tante in Mainz angekommen bist. So sehr sich auch mein Herz nach Deiner Gegenwart sehnt, so noethigen mich doch meine unaufschiebbaren Geschaefte noch einige Zeit auf dies Vergnuegen Verzicht zu thun und einen andern an meine Stelle zu Eurer Begleitung hinzuschicken. Herr Kohn, einer der braven juedischen Lehrer meiner Schule, reist naechsten Sonntag, *IY'H*, mit meiner eignen Equipage von hier ab und wird Freitag, *leṬobah*[81] in *FF'D* eintreffen. Ich wuerde es gerne sehen, wenn er Euch bei seiner Ankunft schon in *FF'D* vorfaende, damit er Sonntag darauf von dort wieder abreisen und Freitag darauf hier eintreffen koennte. Er hat Ordre fuer Eure Bequemlichkeit auf der Reise aufs Beste zu sorgen. Ihr koennet Euch auf diesen guten Mann ganz verlassen, und ganz unbesorgt sein.

---

[77] Hebrew: *le'Orek yamim tobim*: May she live to a ripe old age.

[78] He meant without doubt, Lalotte, one of the daughters of Trenelle.

[79] The Schmoll family to whom Schottlaender wished to be remembered was a very prominent one in the Ashkenazic community in Paris. Aaron (Aron) Schmoll was particularly interested in a reorganization of Jewish communal and religious life and was a member both of the Assembly of Notables in 1806 and the Great Sanhedrin of 1807. He was a representative of the Département of the Seine. The Schwadron Collection in Jerusalem contains a letter signed by him dated January 24, 1820. He was still living in 1828. [Tama] *Organisation*, p. 117ff; Tama, D. *Collection des Procès-Verbaux et Décisions du Grand Sanhédrin*. Paris. 1807. p. 16; Anchel, p. 57, 136, 483; Kahn, *Le Comité de Bienfaisance*. p. 206–207.

[80] Hebrew: With the help of God. Seesen. Thursday. the 19th of Adar Rishon [the first Adar]. 567 according to the shorter reckoning. However, the 19th of the first Adar fell on Friday the 27th of February and the 25th of February fell on a Wednesday the 17th of Adar. Thursday was the 18th of Adar and the 26th of February.

Ich schmeichle mir in *FF'D* viele gute Freunde zu haben, die sich gewiss ein Vergnuegen daraus machen werden, den Aufenthalt meiner lieben Familie so angenehm als moeglich zu machen. Mir wuerde aber ein besonder Gefallen geschehen, wenn Du, liebe Nini und unsre gute Mutter, *LOY'Ṭ*, bei Eurer Ankunft in *FF'D* Euch gleich an Madame May[82] die Schwester der Madame Jacobssohn wenden wolltet. Dieses herzensgute liebe Weibchen ist eine meiner geprueftesten Freundinnen, die Euch gewiss mit Liebe und Herzlichkeit empfangen, und fuer alle Eure kleinen Beduerfnisse schwesterlich sorgen wird. Was ich Dir noch zu sagen habe, meine liebe Nini, das behalte ich zurueck, bis ich so gluecklich bin Dich muendlich zu sprechen. Auf einige Meilen komme ich Euch auf alle Faelle entgegen. Leb wohl, und vergnuegt indessen, und denke fleissig an Deinen Dich
liebenden Freund Bendet Schottlaender.

* * *

Meine gute liebe Mutter LOY'Ṭ.

Ich freue mich herzlich aus Ihrem heutigen Brief Ihre glueckliche Ankunft nach Mainz zu ersehen. Kuenftigen Freitag *IY'H*, werden Sie meinen Wagen bereits in *FF'D* finden. Herr Kohn, den ich zu Ihrer Begleitung mitschicke, wird Sie, laut meiner Ordre in Empfang nehmen, und fuer alle Ihre Beduerfnisse bestens bedacht sein. Mein Raht ist, dass Sie die Pakete und Sachen, die Sie etwa bei sich haben gleich bei Ihrer Ankunft in *FF'D* sogleich auf der dortigen Post legen, damit Sie desto leichter und bequemer in dem Wagen sitzen koennen. Diese Sachen werden dann mit Ihnen zugleich hier eintreffen und Sie koennen dabei nichts verlieren. Wenn Sie, liebe Mutter, glauben dass Sie gleich bei Ihrer Herkunft auf die Hochzeit Ihrer Kinder tanzen koennen, so irren Sie sich. Tausend kleine Umstaende treten zusammen, die mich noetigen die *Ḥatunah*, *LMZ'Ṭ*, bis auf *L'G be 'Omer*[83] also noch auf einige Monate aufzuschieben. Um von den vielen Hindernissen nur einige anzufuehren so ist H' Jacobssohn jetzt in Geschaeften verreist und wird erst in unbestimmter Zeit wieder kommen. Madame Jacobssohn lassen es auch gewisse Umstaende nicht zu, dass sie so bald herkommen koennte.[84] Viele Mitglieder der Samsonschen Familie,[85] die alle meine Hochzeit mitzufeiern beschlossen haben, koennen auch jetzt noch nicht ab. Mein Bruder in Berlin muss auch erst die *FFDOder*[86] Messe beziehen. Diese Messe ist erst den 9t Maerz und dauert 14 Tage. Mein Cousin Heine[87] in Hamburg, der auch kommen will, kann jetzt wegen wichtiger Geschaefte nicht abkommen. Kurz ich kann mir nicht helfen, und muss Geduld haben. Ich habe daher beschlossen, wenn Sie, *IY'H* herkommen, und sich einige Tage hier ausgeruht haben, mit Ihnen und meiner lieben Nini, nach Braunschweig zu reisen, und Sie einige Monate dort unter sehr guten Menschen zu lassen. Ausserdem dass Sie dort vieles werden hoeren und sehen koennen was Ihnen in der Folge nuetzlich sein kann, wird dadurch auch der Kontrast nicht so stark sein, wie von Paris nach Seesen. Die Jahreszeit wird unterdessen freundlicher, die Natur belebter, die Lebensgeister aufgeweckter, und man ist dann eher zur Hochzeit aufgelegt. Sobald die Zeit herankommt lassen wir die liebe Grossmutter auch herkommen damit sie auf die Hochzeit ihres lieben Enkelchen sich nach Herzenslust freuen kann. Ich hoffe, dass dann auch der liebe Onkel und unsre gute Tante Benjamin ihre angenehme Gegenwart nicht entziehen werden.

---

[81] Hebrew: May it be for good!

[82] Gnendel Samson, sister of Mink Samson Jacobson, wife of Israel Jacobson, was married to Seligmann Benedikt May of Frankfort on the Main. Cf. Table 5 of [Berliner, Moritz.] *Stammbaum der Samsonschen Familie.* 3te Auflage. Hannover. 1912.

---

[83] Hebrew: the 33rd day of the Omer counting. Between the 2nd day of Passover and the Feast of Weeks there are 49 Omer days. L'G be'Omer, the 33rd day of this 49 day period, is always the 18th of Iyyar. The wedding took place therefore on Tuesday, May 26, 1807.

[84] Jeanette Jacobson was born in 1806. It is possible that the care of this infant made it difficult for Mrs. Jacobson to come to the wedding.

[85] The genealogical tables of this distinguished family may be found in [Berliner, Moritz] *Stammbaum der Samsonschen Familie*. 3te Auflage. Hannover. 1912.

[86] Hebrew: Frankfort on the Oder.

[87] After the year 1780 the widow of Chaim Bueckeburg (Heimann Heine) the grandfather of Heinrich Heine, went with her sons to Hamburg. There were thus a number of Heines in Hamburg related to the great Jewish poet. Schottlaender was, therefore, possibly related to his family. The cousin mentioned here might possibly be Salomon Heine, the great banker and philanthropist, uncle of Heinrich Heine. Inasmuch as there are Franks in the Heine family it is not impossible that Therese Frank was somehow also related to Schottlaender.

Cf. Karpeles, G. Heinrich Heines Stammbaum vaeterlicherseits. *AZJ.* Vol. 65. 1901. pp. 344ff.

Adieu, ma chère mère, ich habe kein Platz mehr.

Ihr treuer Sohn . . . Schottlaender.

Meiner lieben Tante Benjamin und meiner wuerdigen Grossmutter Trenell empfehle mich bestens; naechstens schreibe ich an jeden besonders. Heute ist es mir unmoeglich. Mein ganzes Zimmer ist voll Menschen.

[addressed]:
Mademoiselle
Mlle Thérese Franq chez Madame
F. Benjamin née Trenelle
à Mayence

Franco

X

[The following letter is undated]:

Liebe Schwester[88]

Du verlangst Verzeihung von mir? O, es ist Dir verziehen, das is ja unsre Schuldigkeit Gott nachzuahmen was wir koennen

Groneman, S. *Genealogische Studien*. Erste Abteilung. Berlin. 1913. p. 25.
Grunwald, Max. *Hamburgs deutsche Juden*. Hamburg. 1904. p. 262.
Loewenstein, Leopold, Stammbaum der Familie Geldern. *MGWJ*. Vol. 51. 1907. p. 209.

---

[88] This letter is obviously written to Nini Frank by her only brother.

und Gott verzeiht ja auch, aber doch kostet es Dich ja nur einige Minuten mir zu schreiben, Bruder, ich befinde mich wohl, mir machts Vergnuegen dass ich sehe dass Du zum wenigsten denkst an Dein einzigen Bruder den Du hast. Empfehle mich meiner lieben Mimla Ihrem Mann und Kinder. Lebe wohl. Dein treuer Bruder der Dich lebenslaenglich wie seine Seele liebet.

Lieberman Frank
[or L. Berman Frank]

THE HEBREW UNION COLLEGE ANNUAL

The Hebrew Union College Annual appears annually. Contributions to its pages are invited from scholars. Communications should be addressed to:

The Hebrew Union College Annual,
The Hebrew Union College,
Cincinnati, Ohio.

TABLE OF CONTENTS OF PREVIOUS VOLUMES

Volume I—1924

A Study of the First Chapter of Genesis.
M. Lambert, Seminaire Rabbinique, Paris, France.

The Three Calendars of Ancient Israel.
Julian Morgenstern, Hebrew Union College, Cincinnati, Ohio.

A Suggestion as to the Sequence of Some Prophecies in the first Isaiah.
William Popper, University of California, Berkeley, Cal.

Kharu, Horim, Dedanim.
E. Täubler, Berlin, Germany.

The Riddle in the Bible.
Harry Torczyner, Hochschule für die Wissenschaft des Judentums, Berlin, Germany.

Implications of the Place of the Book of Ruth in Editions, Manuscripts, and Canon of the Old Testament.
L. B. Wolfenson, University of Wisconsin, Madison, Wis.

Service Tree in Bible and Talmud and in Modern Palestine.
Samuel Krauss, Israelitisch-Theologische Lehranstalt, Vienna, Austria.

Early Christian Epigraphy, Considered from the Jewish Point of View.
Ludwig Blau, Landesrabbinerschule, Budapest, Hungary.

Asenath, the Wife of Joseph—A Haggadic, Literary-Historical Study.
V. Aptowitzer, Israelitisch-Theologische Lehranstalt, Vienna, Austria.

The Religion of the Jews at the Time of Jesus.
Louis Ginzberg, Jewish Theological Seminary, New York City.

Rabbinic Studies in the Synoptic Gospels.
Jacob Mann, Hebrew Union College, Cincinnati, Ohio.

The Halaka in the Gospels and its Relation to the Jewish Law at the Time of Jesus.
Solomon Zeitlin, Isaac Elchanan Theological Seminary, New York City.

The Lost "Confession" of Samuel.
Israel Abrahams, Cambridge University, Cambridge, England.

The Origin and Composition of the Eighteen Benedictions.
K. Kohler, Hebrew Union College, Cincinnati, Ohio.

The Arrangement and the Division of the Mekilta.
Jacob Z. Lauterbach, Hebrew Union College, Cincinnati, Ohio.

The Unity of God in Rabbinic Literature.
A. Marmorstein, Jews' College, London, England.

Saadya's Philosophy.
David Neumark, Hebrew Union College, Cincinnati, Ohio.

Notes on Proofs of the Existence of God in Jewish Philosophy.
Harry A. Wolfson, Harvard University, Cambridge, Mass.

Moses Ibn Ghiquitilla as Poet.
Samuel Poznanski, Warsaw, Poland.
With a Note by Israel Davidson, Jewish Theological Seminary, New York.

Glimpses on the Life of an Italian Rabbi of the Sixteenth Century.
A. Marx, Jewish Theological Seminary, New York.

Destruction or Construction?
I. Elbogen, Hochschule für die Wissenschaft des Judentums, Berlin, Germany.

TABLE OF CONTENTS
Volume II—1925

Moses with the Shining Face.
Julian Morgenstern, Hebrew Union College, Cincinnati, Ohio.

The Chaldaean Dynasty.
A. T. Olmstead, University of Illinois, Urbana, Ill.

The Problem of Inconsequent Post-Dating in II Kings XV. 13, 17 and 23.
W. J. Chapman, Case Memorial Library, Hartford, Conn.

Notes on Parallelism.
William Popper, University of California, Berkeley, Cal.

Studies in Hebrew Roots and Their Etymology.
Joseph Reider, Dropsie College, Philadelphia, Pa.

The Development of the Apostolate in Judaism and its Transformation in Christianity.
Hermann Vogelstein, Breslau, Germany.

Judaism in the Church.
Leo Baeck, Berlin, Germany.

Jewish Proper Names and Derivatives in the Koran.
Joseph Horovitz, University of Frankfurt, Germany.

The Decisions of Maimonides in his Commentary on the Mishna.
Michael Guttman, Jüdisch-Theologisches Seminar, Breslau, Germany.

PUBLICATIONS OF THE HEBREW UNION COLLEGE

Genizah Fragments of the Palestinian Order of Service.
Jacob Mann, Hebrew Union College, Cincinnati, Ohio.
The Origin of the Taḥanun.
Solomon B. Freehof, Chicago, Ill.
The Ceremony of Breaking a Glass at Weddings.
Jacob Z. Lauterbach, Hebrew Union College, Cincinnati, Ohio.
The Law of Nature, Hugo Grotius, and the Bible.
Isaac Husik, University of Pennsylvania, Philadelphia, Pa.
Some Unpublished Letters of Theological Importance.
David Philipson, Hebrew Union College, Cincinnati, Ohio.

TABLE OF CONTENTS
Jubilee Volume—Special, 1925

The History of the Hebrew Union College.
David Philipson, Hebrew Union College.
The Hebrew Union College of Yesterday and a Great Desideratum in its Curriculum Today.
Kaufman Kohler, Hebrew Union College.
Ezekiel 37:15–28 What Happened to the Ten Tribes.
William Rosenau, Baltimore, Md.
The Importance of the Tenses for the Interpretation of the Psalms.
Moses Buttenwieser, Hebrew Union College.
Trial by Ordeal among the Semites and in Ancient Israel.
Julian Morgenstern, Hebrew Union College.
The Men of the Great Synagogue.
Henry Englander, Hebrew Union College.
Palestine in Jewish Theology.
Samuel S. Cohon, Hebrew Union College.
The Names of the Rabbinical Schools and Assemblies in Babylon.
Jacob Z. Lauterbach, Hebrew Union College.
Gaonic Studies.
Jacob Mann, Hebrew Union College.
The Classification of Sciences in Medieval Jewish Philosophy.
Harry A. Wolfson, Jewish Institute of Religion.
Pico Della Mirandola.
Israel Abrahams, Cambridge University, Cambridge, England.
Raphael Norzi: A Rabbi of the Renaissance.
H. G. Enelow, New York.
Notes on Sephardic Jewish History of the Sixteenth Century.
Jacob Rader Marcus, Hebrew Union College.

PUBLICATIONS OF THE HEBREW UNION COLLEGE

Songs and Singers of the Synagogue in the Eighteenth Century.
A. Z. Idelsohn, Hebrew Union College.

Early Reform in Contemporaneous Responses.
Israel Bettan, Hebrew Union College.

Negative Tendencies in Modern Hebrew Literature.
Joseph Reider, Dropsie College.

The Social Implications of Prayer.
Abraham Cronbach, Hebrew Union College.

The Philosophy of Judaism and How It Should Be Taught.
David Neumark, Hebrew Union College.

TABLE OF CONTENTS

Volume III—1926

The Term "Foreigner" (נכרי) *Historically Considered.*
Michael Guttman, Jüdisch-Theologisches Seminar, Breslau, Germany.

Musical Instruments in the Old Testament.
Sol Baruch Finesinger, Hebrew Union College, Cincinnati, Ohio.

Additional Notes on "The Three Calendars of Ancient Israel."
Julian Morgenstern, Hebrew Union College, Cincinnati, Ohio.

Some Notes on the Text of the Scriptures.
Joseph Reider, Dropsie College, Philadelphia, Pa.

The Rewarding and Punishing of Animals and Inanimate Things According to the Aggadic View of the World.
V. Aptowitzer, Israelitisch-Theologische Lehranstalt, Vienna, Austria.

Early Christian Archaeology from the Jewish Point of View.
Ludwig Blau, Landesrabbinerschule, Budapest, Hungary.

Ḳalir Studies.
I. Elbogen, Hochschule für die Wissenschaft des Judentums, Berlin, Germany.

A Didactic Poem of Ṣahlal b. Netanel Gaon.
Israel Davidson, Jewish Theological Seminary, New York.

A Second Supplement to "The Jews in Egypt and in Palestine under the Fāṭimid Caliphs."
Jacob Mann, Hebrew Union College, Cincinnati, Ohio.

Additional Note to Hebrew Union College Jubilee Volume.
Jacob Mann.

The Correspondence between the Rabbis of Southern France and Maimonides about Astrology.
Alexander Marx, Jewish Theological Seminary, New York.

Two Letters from Abraham Firkovich.
Abraham Kahana, Tel Aviv, Palestine.

PUBLICATIONS OF THE HEBREW UNION COLLEGE

Additional Notes to the article on the Classification of Sciences in Mediaeval Jewish Philosophy (Hebrew Union College Jubilee Volume).
HARRY A. WOLFSON, Harvard University, Cambridge, Mass.

TABLE OF CONTENTS
Volume IV—1927

The Oldest Document of the Hexateuch.
JULIAN MORGENSTERN, Hebrew Union College, Cincinnati, Ohio.

Die Bibel und die jüdische Religionsphilosophie der Gegenwart.
ALBERT LEWKOWITZ, Jüdisch-Theologisches Seminar, Breslau, Germany.

Die Lehre vom ungeschriebenen Gesetz im jüdischen Schrifttum.
I. HEINEMANN, Jüdisch-Theologisches Seminar, Breslau, Germany.

A Significant Controversy between the Sadducees and the Pharisees.
JACOB Z. LAUTERBACH, Hebrew Union College, Cincinnati, Ohio.

Spuren des Matriarchats im jüdischen Schrifttum.
V. APTOWITZER, Israelitisch-Theologische Lehranstalt, Wien.

Changes in the Divine Service of the Synagogue due to Religious Persecutions.
JACOB MANN, Hebrew Union College, Cincinnati, Ohio.

Midrash Hashkem Quotations in Alnaqua's Menorat Ha-Maor.
H. G. ENELOW, Temple Emanu-El, New York City.

Sprachliche Bemerkungen zum Texte des Sepher Ma'asijoth, ed. Gaster.
SAMUEL KRAUSS, Israelitisch-Theologische Lehranstalt, Wien.

"Gott wünscht das Herz": Legenden über einfältige Andacht und über den Gefährten im Paradies.
BERNHARD HELLER, Landesrabbinerschule, Budapest.

Ḳalir-Studien.
I. ELBOGEN, Hochschule für die Wissenschaft des Judentums, Berlin.

Gabirol's Authorship of the "Choice of Pearls" and the two Versions of Joseph Ḳimḥi's "Sheḳel Haḳodesh."
ALEXANDER MARX, Jewish Theological Seminary, New York City.

תעודות מכתב־יד
JACOB MOSES TOLEDANO, Tangier, Morocco.

Additional Note to Toledano's Article.
JACOB MANN.

The Astrolabe in Jewish Literature.
SOLOMON GANDZ, Rabbi Isaac Elchanan Theological Seminary, New York City.

Bendel Ahrweiler.
M. GINSBURGER, Strasbourg.

Additions and Corrections to "The Correspondence Between the Rabbis of Southern France and Maimonides About Astrology" (in the Hebrew Union College Annual, Vol. III, 1926).
ALEXANDER MARX, Jewish Theological Seminary, New York City.

TABLE OF CONTENTS
Volume V—1928

The Book of the Covenant.
JULIAN MORGENSTERN, Hebrew Union College, Cincinnati, Ohio.

The Poems of Haggai.
PAUL F. BLOOMHARDT, Wittenberg College, Springfield, Ohio.

Das tannaitische Grenzverzeichnis Palästinas.
SAMUEL KLEIN, Nové Zámky, Czecho-Slovakie.

Spuren des Matriarchats im jüdischen Schrifttum (Schluss und Nachträge).
V. APTOWITZER, Israelitisch-Theologische Lehranstalt, Wien.

The Jewish Catacombs and Inscriptions of Rome.
H. J. LEON, University of Texas, Austin, Texas.

An Unknown Hebrew Version of the Sayings of Aesop.
RICHARD J. H. GOTTHEIL, Columbia University, New York, N. Y.

The Memoirs of a Siennese Jew.
CECIL ROTH, London.

מכתבי״ד
JACOB MOSES TOLEDANO, Tangier, Morocco.

Die Teleologie bei Maimonides.
Z. DIESENDRUCK, Wien.

War Nachman Krochmal Hegelianer?
SIMON RAWIDOWICZ, Berlin-Charlottenburg.

Divine Help as a Social Phenomenon.
ABRAHAM CRONBACH, Hebrew Union College, Cincinnati, Ohio.

TABLE OF CONTENTS
Volume VI—1929

The Gates of Righteousness.
JULIAN MORGENSTERN, Hebrew Union College, Cincinnati, Ohio

Fear and Love of God in the Old Testament.
BERNARD BAMBERGER, Albany, N. Y.

Rabbinic Parallels in Early Church Orders.
F. GAVIN, The General Theological Seminary, New York, N. Y.

The Pharisees and Their Teachings.
JACOB Z. LAUTERBACH, Hebrew Union College, Cincinnati, Ohio.

PUBLICATIONS OF THE HEBREW UNION COLLEGE

The Background of the Haggadah.
A. Marmorstein, Jews College, London, England.

Arabisch-Jūdische Shöpfungstheorieen.
V. Aptowitzer, Wien.

Studies in History of Mathematics from Hebrew and Arabic Sources.
I. The Terminology of Multiplication in Arabic and Hebrew Sources.
II. The Mishnat Ha-Middot or The First Hebrew Geometry Written About 150 C. E., Prolegomena to a New Edition.
Solomon Gandz, The Rabbi Isaac Elchanan Theological Seminary and Yeshiva College, New York City.

Eliezer Crescas and his Bet Zebul, the Bible References in Talmud and Midrash.
Moses Gaster, London, England.

The Sermons of Judah Moscato.
Israel Bettan, Hebrew Union College, Cincinnati, Ohio.

Mendelssohn as Translator and Exegete.
Henry Englander, Hebrew Union College, Cincinnati, Ohio.

Supplement to "An Unknown Hebrew Version of the Sayings of Aesop," Hebrew Union College Annual, Vol. V, pp. 315–352.
Richard J. H. Gottheil, Columbia University, New York, N. Y.

Volume I, 639 pages, bound, (out of print)
Volume II, 433 pages, bound, $1.50
Volume III, 375 pages, bound, $1.50
Volume IV, 494 pages, bound, $1.50
Volume V, 620 pages, bound, $2.00
Volume VI, 350 pages, bound, $2.00
Volume VII, 577 pages, bound, $2.00
Jubilee Volume, 521 pages, bound, (out of print)

Copies may be secured from:
Department of Synagog and School Extension
Merchants Bldg., Cincinnati, Ohio
U. S. A.

LIBRARY
WINEBRENNER THEOLOGICAL
SEMINARY

WINEBRENNER SEMINARY LIBRARY
83- 2032

WINEBRENNER SEMINARY
BM11 .H4 v.7
wimai
Hebrew Union Colleg/Hebrew Union College
3 0733 00033 8293

BM
11
.H4
v.7
83-2032
Hebrew Union College
Hebrew Union College
annual.

DATE DUE

WINEBRENNER THEOLOGICAL
SEMINARY LIBRARY
701 E. Melrose Avenue
Findlay, Ohio 45840